

THE
"YEARLY DIGEST"

OF

Indian & Select English Cases

(ISSUED IN TWELVE MONTHLY AND ANNUAL PARTS)

Reported in all the important Legal Journals during the year

1940

BY

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PUBLISHED BY
THE MADRAS LAW JOURNAL OFFICE
MYLAPORE, MADRAS.

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PRINTED AND PUBLISHED BY R. NARAYANASWAMI IYER
AT THE MADRAS LAW JOURNAL PRESS, MYLAPORE, MADRAS
1941

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The English Law Reports and Law Journal . 1940
 All England Law Reports . 1940.

ABBREVIATIONS EXPLAINED

Reports.

I.L.R. (1940) All.	..	..	..	Indian Law Reports, Allahabad Series.
A.L.J.	..	..	..	Allahabad Law Journal.
A.W.R.	..	..	..	Allahabad Weekly Reporter.
A. Cr.C.	..	..	..	Allahabad Criminal Cases.
A.I.R. 1940 All. or 1940 A.	..	..	..	All India Reporter, 1940 Allahabad.
A.M.L.J.	..	..	..	Ajmer-Merwara Law Journal.
I.L.R. (1940) Bom.	..	..	..	Indian Law Reports, Bombay Series.
Bom. L. R.	..	..	..	Bombay Law Reporter.
A. I. R. 1940 Bom. or 1940 Bom.	..	..	..	All India Reporter, 1940 Bombay.
Bur. L. T.	..	..	..	Burma Law Times.
Bur. L. J.	..	..	..	Burma Law Journal.
B.R.	..	..	..	Bihar Reports.
I.L.R. (1940) 1 & 2 Cal.	..	..	..	Indian Law Reports, Calcutta Series.
C. L. T.	..	..	..	Cuttack Law Times.
C. L. J.	..	..	..	Calcutta Law Journal.
Cr. L. J.	..	..	..	Criminal Law Journal.
C. W. N.	..	..	..	Calcutta Weekly Notes.
Comp. C.	..	..	..	Company Cases.
A. I. R. 1940 Cal. or 1940 Cal.	..	..	..	All India Reporter, 1940 Calcutta.
A. I. R. 1940 F. C.	..	..	..	All India Reporter, 1940 Federal Court.
Fed. L. J.	..	..	..	Federal Law Journal.
F. L. R.	..	..	..	Federal Law Reports.
I. A.	..	..	..	Law Reports, Indian Appeals.
A. I. R. 1940 P. C.	..	..	..	All India Reporter, 1940 Privy Council.
I. C.	..	..	..	Indian Cases.
I. T. R.	..	..	..	Income-tax Reports
R. P. C., R. A., R. B., R. C.; R. L., R. M.;	..	..	..	Indian Rulings, Privy Council, All., Bom., Cal., Lah., Mad., Nag., Oudh, Pat., etc.
I. I.	..	..	..	Indian Law Reports, Lahore Series.
I. I.	..	..	..	All India Reporter, 1940 Lahore.
L. B. R.	..	..	..	Lahore Law Times.
L. W.	..	..	..	Lower Burma Rulings.
Luck.	..	..	..	Law Weekly.
I.L.R. (1940) Mad.	..	..	..	Indian Law Reports, Lucknow Series.
(1940) M. L. J.	..	..	..	Indian Law Reports, Madras Series.
M. L. T.	..	..	..	Madras Law Journal.
M. W. N.	..	..	..	Madras Law Times.
M. L. R.	..	..	..	Madras Weekly Notes.
A. I. R. 1940 Mad. or 1940 Mad.	..	..	..	Marwar Law Reports.
Mys. H. C. R.	..	..	..	All India Reporter, 1940 Madras.
Mys. L. J.	..	..	..	Mysore High Court Reports.
I. L. R. (1940) Nag.	..	..	..	Mysore Law Journal.
N. L. J.	..	..	..	Indian Law Reports, Nagpur Series.
A. I. R. 1940 Nag. or 1940 Nag.	..	..	..	Nagpur Law Journal.
A. I. R. 1940 Oudh or 1940 Oudh	..	..	..	All India Reporter, 1940 Nagpur.
O. A.	..	..	..	All India Reporter, 1940 Oudh.
O.L.R.	..	..	..	Oudh Appeals
O. W. N.	..	..	..	Oudh Law Reports.
P. R.	..	..	..	Oudh Weekly Notes.
P. L. R.	..	..	..	Punjab Record.
P. W. R.	..	..	..	Punjab Law Reporter.
Pat. or P.	..	..	..	Punjab Weekly Reporter.
A. I. R. 1940 Pat. or 1940 Pat.	..	..	..	Indian Law Reports, Patna Series.
Pat. L. J.	..	..	..	All India Reporter, 1940 Patna.
Pat. L. T.	..	..	..	Patna Law Journal.
A. I. R. 1940 Pesh.	..	..	..	Patna Law Times.
R. or Rang.	..	..	..	All India Reporter, 1940 Peshawar.
1940 Rang. L.R.	..	..	..	Indian Law Reports, Rangoon Series.
A. I. R. 1940 Rang. or 1940 Rang.	..	..	..	Rangoon Law Reports.
R. D.	..	..	..	All India Reporter, 1940 Rangoon.
S. L. R.	..	..	..	Revenue Decisions.
A. I. R. 1940 Sind or 1940 Sind	..	..	..	Sind Law Reporter.
T. L. R.	..	..	..	All India Reporter, 1940 Sind.
T. L. J.	..	..	..	Travancore Law Reports.
T. L. T.	..	..	..	Travancore Law Journal.
U. B. R.	..	..	..	Travancore Law Times.
Co. L.J.	..	..	..	Upper Burma Rulings.
	..	..	..	Cochin Law Journal.

Other Abbreviations.

Appl.	..	Applied.	Disc.	..	Discussed.	P. C.	..	Privy Council
Appr.	..	Approved.	Diss.	..	Dissented from.	Ref. or R.	..	Referred.
Comm.	..	Commented.	Doubt.	..	Doubted.	Rel.	..	Relied.
Cons.	..	Considered.	Expl.	..	Explained.	Rev.	..	Revenue.
Cr.	..	Criminal.	Foil.	..	Followed.	S. B.	..	Special Bench.
Dist. or D.	..	Distinguished.	F. B.	..	Fell Bench.			

ABBREVIATIONS EXPLAINED

Reports.

I L R (1940) All	..	..	Indian Law Reports, Allahabad Series
A L J	..	..	Allahabad Law Journal
A W R	..	..	Allahabad Weekly Reporter
A Cr C	..	..	Allahabad Criminal Cases
A I R 1940 All or 1940 A	..	..	All India Reporter, 1940 Allahabad
A M L J	..	..	Ajmer-Merwara Law Journal
I L R (1940) Bom	..	..	Indian Law Reports, Bombay Series
Bom L R	..	..	Bombay Law Reporter
A I R 1940 Bom or 1940 Bom	..	..	All India Reporter, 1940 Bombay
Bur L T	..	..	Burma Law Times
Bur L J	..	..	Burma Law Journal
BR	..	..	Bihar Reports
I L R (1940) 1 & 2 Cal	..	..	Indian Law Reports, Calcutta Series
C L T	..	..	Cuttack Law Times
C L J	..	..	Calcutta Law Journal
Cr L J	..	..	Criminal Law Journal
C W N	..	..	Calcutta Weekly Notes
Comp C	..	..	Company Cases
A I R 1940 Cal or 1940 Cal	..	..	All India Reporter, 1940 Calcutta
A I R 1940 F C	..	..	All India Reporter 1940 Federal Court
Fed L J	..	..	Federal Law Journal
F L R	..	..	Federal Law Reports
I A	..	..	Law Reports, Indian Appeals
A I R 1940 P C	..	..	All India Reporter, 1940 Privy Council
I C	..	..	Indian Cases
I T R	..	..	Income tax Reports
R P C R A R B R C R L R M ,	..	..	Indian Rulings Privy Council All, Bom ,
R N R O R P R R , R S	..	..	Cal Lah Mad, Nag Oudh Pat, etc
I L R (1940) Lah	..	..	Indian Law Reports Lahore Series
A I R 1940 Lah or 1940 Lah	..	..	All India Reporter, 1940 Lahore
Lah L T or L L T	..	..	Lahore Law Times
L B R	..	..	Lower Burma Rulings
L W	..	..	Law Weekly
Luck	..	..	Indian Law Reports Lucknow Series
I L R (1940) Mad	..	..	Indian Law Reports Madras Series
(1940) M L J	..	..	Madras Law Journal
M L T	..	..	Madras Law Times
M W N	..	..	Madras Weekly Notes
M L R	..	..	Marwar Law Reports
A I R 1940 Mad or 1940 Mad	..	..	All India Reporter, 1940 Madras.
Mys H C R	..	..	Mysore High Court Reports
Mys L J	..	..	Mysore Law Journal
I L R (1940) Nag	..	..	Indian Law Reports Nagpur Series
N L J	..	..	Nagpur Law Journal
A I R 1940 Nag or 1940 Nag	..	..	All India Reporter, 1940 Nagpur
A I R 1940 Oudh or 1940 Oudh	..	..	All India Reporter, 1940 Oudh
O A	..	..	Oudh Appeals
O L R	..	..	Oudh Law Reports
O W N	..	..	Oudh Weekly Notes
P R	..	..	Punjab Record.
P L R	..	..	Punjab Law Reporter
P W R	..	..	Punjab Weekly Reporter
Pat or P	..	..	Indian Law Reports Patna Series
A I R 1940 Pat or 1940 Pat	..	..	All India Reporter, 1940 Patna.
Pat L J	..	..	Patna Law Journal
Pat L T	..	..	Patna Law Times
A I R 1940 Pesh	..	..	All India Reporter, 1940 Peshawar
R or Rang	..	..
1940 Rang L R	..	..
A I R 1940 Rang or 1940 Rang	..	..
R D	..	..
S L R	..	..	Sind Law Reporter
A I R 1940 Sind or 1940 Sind	..	..	All India Reporter, 1940 Sind
T L R	..	..	Travancore Law Reports
T L J	..	..	Travancore Law Journal
T L T	..	..	Travancore Law Times
U B R	..	..	Upper Burma Rulings
Co L J	..	..	Cochin Law Journal

Other Abbreviations

Appl	..	Applied	Disc	..	Discussed	P C	..	Privy Council
Appr	..	Approved	Diss	..	Dissented from.	Ref or R	..	Referred.
Comm	..	Commented	Doubt	..	Doubted	Rel	..	Relied
Cons	..	Considered	Expl	..	Explained	Rev	..	Revenue
Cr	..	Criminal	Foll	..	Followed	S B	..	Special Bench.
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232 Foll 19 Pat 1 (P C)
66 I A 42 Foll I L R (1940) 1
Cal 168=44 C W N 185
50 Dist I L R (1940) 1
Cal 197, Foll 42 Bom
L R 279=I L R 1940
Bom 328, Rel (1940) 1
M L J 165
66=18 Pat 234 Appl
(1940) 2 M L J 715, Foll
(1940) 2 M L J 911 (P C)
134=43 C W N 594 Ref
44 C W N 873
145 Rel (1940) 1 M L J
732 (F B)
184 Ref (1940) 1 M L J
561
265 Ref 67 I A 129=I
L R (1940) 1 Cal 415
67 I A 129=(1940) 1 Cal 415
Ref (1940) 2 M L J 510
160 (P C) Appl (1940)
2 M L J 648
I L R ALLAHABAD SERIES
1 All 267 (F B) Ref 19 Pat 715
348 Dis (1940) 1 M L J
922
478 Foll I L R 1940 All
371
2 All 297 Ref 44 C W N 277
565 Ref I L R 1940 Kar
447
792 (P C) Disc 19 Pat
354
3 All 251 Dis 44 C W N 702
523 Ref I L R 1940 All
147
776 Cons 1940 Rang
L R 441
787 Foll I L R 1940 All
371
4 All 235 Disc I L R 1940 Nag
573 (F B)
5 All 233 Ref 1940 A L J 97
6 All 1 (P C) Foll I L R 1940
Nag 94
61 Ref 1940 Rang L R
223
269 (P C) Ref 1940 Rang
L R 82
431 Not Appr I L R 1940
All 416
7 All 178 (F B) Ref (1940) 2
M L J 903=44 C W N
957=21 Lah 493 (P C)
414 (F B) Foll I L R
(1940) 1 Cal 519, Ref
1940 Rang L R 215
702 Ref (1940) 1 M L J
482 (F B)

7 All 752 Rel 21 Lah 345
822 Dist 15 Luck 463,
Ref 21 Lah 493=(1940)
2 M L J 903 (P C)
8 All 365 Foll 44 C W N 1063
9 All 131 (F B) Foll 21 Lah 447
434 Rel 19 Pat 208
10 All 166 (P C) Dist I L R
1940 All 344, Foll I L R
1940 Nag 161, 302
580 Foll 44 C W N 702
11 All 57 Ref 42 Bom L R 165
118 Ref 42 Bom L R 165
128 Ref 42 Bom L R 165
194 (F B) Rel (1940) 2
M L J 298 (F B)
375 Dis 42 Bom L R 428
12 All 79 Ref 15 Luck 376
129 Ref 15 Luck 163
(F B)
461 Dis 15 Luck 376
13 All 89 Dis (1940) 1 M L J
922
14 All 226 (F B) Dis 42 Bom L
R 428
15 All 129 Ref 1940 A L J 467
404 Ref 15 Luck 444
16 All 259 (F B) Dist I L R
1940 Nag 198
344 (F B) Ref I L R 1940
Nag 348 (F B)
17 All 29 Ref I L R 1940 All
232=1940 A L J 188,
Rel I L R 1940 All 201
=1940 A L J 81
112 Foll I L R 1940 Nag
538
238 Rel 15 Luck 332
431 Ref 15 Luck 265
18 All 101 Foll I L R 1940 All
19
19 All 169 Ref 1940 Rang L R
135
211 Rel 1940 A L J 399
480 Foll 1940 Rang L R
402
517 Dist I L R (1940) 1
Cal 544, 42 Bom L R
470
20 All 23 (F B) Foll 19 Pat 524
35 Ref 15 Luck 487
322 Rel 15 Luck 399
21 All 99 Ref I L R 1940 Mad
109
204 Ref I L R 1940 Nag
348 (F B)
223 (P C) Ref 44 C W N
383
277 Ref 1940 Rang L R
402
329 Foll I L R 1940 All
425=1940 A L J 373
22 All 55 Dist I L R 1940 Bom
225
106 Ref I L R 1940 Kar
74 (F B)
135 Dist 19 Pat 433
264 (F B) Foll 19 Pat
524, Not Foll 19 Pat
688

- 23 All 37 (P C) Ref 44 C W N
873
—106 Disc 1940 Rang L R
492
—233 (P C) Foll I L R
1940 Nag 74
—291 Ref I L R 1940 All
599
- 24 All 242 Foll 42 Bom L R 231
- 25 All 27 Diss 19 Pat 870 (F B),
Foll 19 Pat 172
—380 Ref I L R 1940 All
625 (P C)
—635 D st 42 Bom L R 262
—I L R 1940 Bom 225
- 26 All 28 Ref (1940) 2 M L J
621
—156 D ss I L R 1940 All
246=1940 A L J 180 (F B)
—603 Diss (1940) 1 M L J
922
—606 Ref 1940 Rang L R
59 (F B)
- 27 All 320 Foll I L R 1940 All
425
—325 Ref I L R 1940 All
580
—334 Appr I L R 1940 All
246=1940 A L J 180 (F B)
—462 Dist 42 Bom L R 750
- 28 All 137 Appl I L R 1940
All 344
—625 Ref I L R 1940 Kar
119
- 29 All 7 Ref I L R 1940 Kar
74 (F B)
—143 Ref 15 Luck 43
—605 Foll I L R 1940 All
314
- 30 All 44 Ref I L R 1940 All
128
—134 Ref I L R 1940 All
599=1940 A L J 443
—143 (145) Ref I L R 1940
All 19
—290 Ref I L R 1940 Nag
496
—319 Ref I L R 1940 Nag
496
—525 (P C) Foll I L R
1940 Kar 230, Ref 1940
A L J 231
- 31 All 9 Ref 15 Luck 487
—45 Ref 1940 Rang L R
402
—148 Rel I L R 1940 Nag
125
—156 Not Appr (1940) 1
M L J 195
—285 Ref 67 I A 160=42
Bom L R 640-21 Lah
470 (P C)
—290 Dist I L R 1940 Nag
123
—323 Doubted 19 Pat 578
—572 Appl I L R 1940 All
344=1940 A L J 166
—583 Dist I L R 1940 All
310=1940 A L J 203

- 33 All 51 Ref 15 Luck 126
111 Ref I L R 1940 All
351
—272 (P C) Rel I L R 1940
Kar 41
—283 Rel I L R 1940 Nag
573 (F B)
—558 Rel I L R 1940 All
360
—771 D sc 1940 Rang L R
256
- 34 All 26 Diss 1940 Rang L R.
512
—63 (P C) Dist I L R 1940
Nag 63
—140 Not Foll I L R 1940
Nag 324
—213 (P C) Foll I L R.
1940 Nag 553
- 35 All 524 D ss (1940) 1 M L J
922
—541 Foll I L R 1940 All
128
—571 Rel I L R 1940 Nag
573 (F B)
- 36 All 53 Ref I L R 1940 Kar
74 (F B)
—129 Ref I L R 1940 Kar
74 (F B)
—336 (P C) Rel I L R
1940 Nag 225
—350 (P C) D st I L R
1940 Nag 324 496
—425 Ref I L R 1940 Kar
74 (F B)
- 37 All 208 Foll I L R 1940 Nag
496
—423 Appr I L R 1940 All
201
—460 Ref (1940) 2 M L J
780
—557 (P C) Dist I L R
1940 Nag 526, Rel I L
R 1940 Kar 339
—575 Ref 15 Luck 287
- 38 All 126 D sc I L R 1940
Bom 109
—327 Rel 1940 A L J 164
- 39 All 143 D st I L R 1940 All
192=1940 A L J 269
—191 (F B) Diss I L R
1940 Bom 426=42 Bom
L R 428
—641 (F B) Ref I L R 1940
Nag 302
- 40 All 79 Not Foll I L R 1940
Kar 470 (F B)
—147 D st I L R 1940
Bom 225
—341 (F B) Foll I L R
1940 Nag 48
—465 Not Appr I L R 1940
All 136
- 41 All 45 Ref I L R 1940 All
599
—243 Cons 44 C W N 665
- 42 All 125 Ref I L R 1940 All
61
—609 (P C) Ref 1940 Rang
L R 136, I L R 1940
All 499

- 43 All 20 Ref I L R 1940 B m
339
—266 Ref I L R 1940 All
183
—268 Dist I L R 1940 All
71
—525 Rel 1940 A L J 1-
I L R 1940 All 100
—703 Ref 44 C W N 240
- 44 All 67 Ref I L R 1940 All
580
—190 Not Foll I L R 1940
Nag 573 (F B)
—198 Rel I L R 1940 All
79
—231 (F B) Ref 15 Luck
253
—258 Expl (1940) 1 M L J
297
—301 (P C) Foll I L R
1940 Kar 319
—382 Ref 1940 A L J 366
—401 Foll I L R 1940 Bom
475
—555 D ss I L R (1940)
1 Cal 486 Ref (1940) 2
M L J 877
—669 Rel (1940) 1 M L J
780
—686 Ref I L R 1940 Kar
125
—708 Ref I L R 1940 Kar
417
—743 Foll 21 Lah 223
- 45 All 49 Ref 1940 A L J 366
—115 (F B) Foll 44 C W N
357
—140 Rel I L R 1940 Kar
287
—154 Rel (1940) 2 M L J
867
—166 Ref 19 Pat 301
—179 (P C) Ref & D st
I L R 1940 Nag 533
—419 (P C) Rel I L R
1940 Nag 348 (F B)
—548 Foll I L R 1940 Nag
463
—557 Rel I L R 1940 Nag
125
—581 Rel 1940 A L J 113
—623 Ref I L R 1940 Nag
302
—729 Ref 15 Luck 117
- 46 All 80 Rel I L R 1940 Kar
119
—95 (P C) Rel 21 Lah 96
—233 Cons 1940 Rang
L R 1
—328 Ref 1940 Rang L R
381
—446 Rel I L R 1940 Kar
123
—671 (F B) Rel (1940) 2
M L J 556
—710 Ref I L R 1940 All
185
—733 Dist I L R 1940 All
517 (F B)
—882 Disc I L R 1940 Bom
109
—894 Diss I L R 1940 Kar
434

- 47 All 268 Dist I L R 1940 All
314
— 353 Ref 1940 Rang L R
507
— 368 Ref I L R 1940 All
274 (F B)
— 456 Ref I L R 1940 All
185
— 466 Rel 15 Luck 463
513 (F B) Ref 1940 A L J
42 = I L R 1940 A 178
— 637 (F B) Ref 19 Pat 715
743 Foll 44 C W N 1034
— 784 Foll I L R 1940 Nag
55
— 795 (P C) Dist I L R
1940 Nag 573 (F B)
— 823 observations of Sulai
man J Adopted (1940) 2
M L J 903 = 44 C W N
957 (P C), Ref 21 Lah
493 (P C)
— 921 Ref I L R 1940 All
185
- 48 All 171 Ref I L R 1940 Kar
447
— 175 Foll 1940 Rang L R
512
— 300 Foll I L R 1940 Nag
221
— 310 Dist I L R 1940 All
207
— 356 Ref I L R 1940 All
201
— 368 Dist I L R 1940 Kar
103
— 414 Not Foll I L R 1940
Nag 293
— 834 Ref I L R (1940) 1
Cal 97
- 49 All 52 Dist I L R 1940 Mad
27
— 57 Foll 19 Pat 369
— 85 Cons 1940 Rang L R
1
— 234 Dist I L R 1940
Bom 415 = 42 Bom L R
478 Ref & Rel 15 Luck
39
— 276 Disappr I L R 1940
All 246
— 297 (F B) Dist 15 Luck
95
— 440 Cons 1940 Rang L
R 1
— 565 Foll I L R 1940 Nag
334
— 873 Rel I L R 1940 Nag
110
— 887 Ref I L R 1940 Lah
40
— 918 Foll I L R 1940 Nag
181
- 50 All 208 Foll I L R 1940 Nag
29
— 238 Ref 15 Luck 90
— 430 Overruled I L R 1940
All 522
— 608 Ref (1940) 2 M L J
303
- 50 All 678 Appr I L R 1940 All
416
— 713 Ref I L R 1940 Kar
230
— 748 Cons I L R 1940
Bom 13
— 767 Dist I L R (1940) 1
Cal 486 = 44 C W N 438
- 51 All 237 Rel I L R 1940 Kar
385
— 285 Dist 1940 A L J 348
— 382 Not Foll I L R 1940
Kar 414
— 478 Rel 1940 A L J 403
Ref I L R 1940 A 416
— 506 Ref 42 Bom L R 750
509 Rel (1940) 2 M L J
328
— 606 Ref I L R 1940 All
580
— 805 view of Niamatullah J,
Appr 44 C W N 294 = 15
Luck 1 (P C)
— 850 Foll 19 Pat 669
— 864 Dist I L R 1940 Nag
133
— 1027 Ref I L R 1940 All
136
— 1042 Ref 15 Luck 157
- 52 All 110 Dist I L R 1940 All
580 Ref I L R 1940 All
580
— 232 Foll I L R 1940 All
580, 596 Ref I L R
1940 All 596
— 391 Dist I L R 1940 Mad
77
— 539 Dist I L R 1940 All
509
— 901 Rel I L R 1940 Bom
630 = 42 Bom L R 592
— 910 Dist 42 Bom L R 663
= I L R 1940 Bom 689
— 927 Foll I L R 1940 Nag
463 549
— 979 Ref I L R 1940 All
580
— 1005 Ref 44 C W N 580
1011 (F B) Rel 21 Lah
217
- 53 All 103 (P C) Dist 19 Pat
669
— 125 Dist 11 R 1940 Bom
146
— 215 Foll I L R 1940 Nag
188
— 239 Ref I L R 1940 Kar
375
— 313 Rel 15 Luck 471
— 374 Foll (1940) 1 M L J
314
— 384 Foll 44 C W N 607
— 528 Ref I L R 1940 Nag
496
— 612 Dist I L R 1940 All
192, Ref 1940 Rang L R
512
- 54 All 140 Ref I L R 1940 All
560
- 54 All 171 (F B) Ref (1940) 2
M L J 700
— 183 Rel 15 Luck 332
— 220 (F B) Ref I L R 1940
Nag 496
— 240 Dist I L R 1940 All
368
— 293 Ref (1940) 1 M L J
939 (F B)
— 525 Foll I L R 1940 Nag
549
— 573 (F B) Dist I L R
1940 All 377 (F B), 536,
Not Foll I L R 1940 All
190, Ref 1940 A L J 88,
301
— 622 Appr (1940) 1 M L J
235
— 646 Rel I L R 1940 All
344
— 781 Foll I L R 1940 Nag
208
— 796 Dist 15 Luck 463
— 874 Not Foll 44 C W N
701
— 897 (F B) Foll 19 Pat
753 (F B)
— 1067 (P C) Foll I L R
1940 Nag 553, Ref 1940
Rang L R 82
— 1085 (F B) Foll 19 Pat
321
- 55 All 216 Foll I L R 1940 Nag
463, Rel I L R 1940
Kar 360
— 301 (F B) Rel I L R 1940
Nag 488
— 326 Ref I L R 1940 All
121
— 370 Ref 44 C W N 1013
(P C)
— 432 (F B) Not Foll 19
Pat 123 (F B)
— 463 Overruled I L R 1940
All 396 (F B), Dist 21
Lah 242 (F B)
— 512 Ref I L R 1940 All
499
— 542 Foll I L R 1940 Nag
225
— 632 Ref 15 Luck 524,
537
— 697 Ref (1940) 1 M L J
629 (F B)
— 725 (F B) Foll 19 Pat
382, Ref 1940 Rang L R
145
— 871 Ref 1940 A L J 97
— 1008 Rel I L R 1940 All
178
- 56 All 131 Dist I L R 1940 Kar
195
— 142 Not Foll 19 Pat 90
— 241 Dist I L R 1940 All
4 (7)
— 261 (F B) Ref 21 Lah
470 (P C)
— 277 Ref I L R 1940 All
11
— 376 Foll I L R 1940 Nag
411

- 23 All 37 (P.C.) Ref 44 C.W.N.
873
—106 Disc 1940 Rang L.R.
492
—233 (P.C.) Foll I.L.R.
1940 Nag 74
—291 Ref I.L.R. 1940 All
599
- 24 All 242 Foll 42 Bom L.R. 231
- 25 All 27 Diss 19 Pat 870 (F.B.),
Foll 19 Pat 172
—580 Ref I.L.R. 1940 All
625 (P.C.)
—635 Dist 42 Bom L.R. 262
= I.L.R. 1940 Bom 225
- 26 All 28 Ref (1940) 2 M.L.J.
621
—156 Diss I.L.R. 1940 All
246 = 1940 A.L.J. 180 (F.B.)
—603 Diss (1940) 1 M.L.J.
922
—606 Ref 1940 Rang L.R.
59 (F.B.)
- 27 All 320 Foll I.L.R. 1940 All
425
—325 Ref I.L.R. 1940 All
580
—334 Appr I.L.R. 1940 All
246 = 1940 A.L.J. 180 (F.B.)
—462 Dist 42 Bom L.R. 750
- 28 All 137 Appl I.L.R. 1940
All 344
—625 Ref I.L.R. 1940 Kar
119
- 29 All 7 Ref I.L.R. 1940 Kar
74 (F.B.)
—143 Ref 15 Luck 43
—685 Foll I.L.R. 1940 All
314
- 30 All 44 Ref I.L.R. 1940 All
128
—134 Ref I.L.R. 1940 All
599 = 1940 A.L.J. 443
—143 (145) Ref I.L.R. 1940
All 19
—290 Rel I.L.R. 1940 Nag
496
—319 Ref I.L.R. 1940 Nag
496
—525 (P.C.) Foll I.L.R.
1940 Kar 230, Ref 1940
A.L.J. 231
- 31 All 9 Ref 15 Luck 487
—45 Ref 1940 Rang L.R.
402
—148 Rel I.L.R. 1940 Nag
125
—156 Not Appr (1940) 1
M.L.J. 195
—285 Ref 67 I.A. 160 = 42
Bom L.R. 640 = 21 Lah
470 (P.C.)
—290 Dist I.L.R. 1940 Nag
125
—523 Doubt'd 19 Pat 578
—572 Appl I.L.R. 1940 All
344 = 1940 A.L.J. 166
—583 Dist I.L.R. 1940 All
340 = 1940 A.L.J. 203
- 33 All 51 Ref 15 Luck 126
—111 Ref I.L.R. 1940 All
351
—272 (P.C.) Rel I.L.R. 1940
Kar 41
—283 Rel I.L.R. 1940 Nag
573 (I.B.)
—358 Rel I.L.R. 1940 All
360
—771 Disc 1940 Rang L.R.
256
- 34 All 26 Diss 1940 Rang L.R.
512
—63 (P.C.) Dist I.L.R. 1940
Nag 63
—140 Not Foll I.L.R. 1940
Nag 324
—213 (P.C.) Foll I.L.R.
1940 Nag 553
- 35 All 524 Diss (1940) 1 M.L.J.
922
—541 Foll I.L.R. 1940 All
128
—571 Rel I.L.R. 1940 Nag
573 (F.B.)
- 36 All 53 Ref I.L.R. 1940 Kar
74 (F.B.)
—129 Ref I.L.R. 1940 Kar
74 (F.B.)
—336 (P.C.) Rel I.L.R.
1940 Nag 225
—350 (P.C.) Dist I.L.R.
1940 Nag 324, 496
—425 Ref I.L.R. 1940 Kar
74 (F.B.)
- 37 All 208 Foll I.L.R. 1940 Nag
496
—423 Appr I.L.R. 1940 All
201
—460 Ref (1940) 2 M.L.J.
780
—557 (P.C.) Dist I.L.R.
1940 Nag 526, Rel I.L.R.
1940 Kar 339
—575 Ref 15 Luck 287
- 38 All 126 Disc I.L.R. 1940
Bom 109
—327 Rel 1940 A.L.J. 164
- 39 All 143 Dist I.L.R. 1940 All
192 = 1940 A.L.J. 269
—191 (F.B.) Diss I.L.R.
1940 Bom 426 = 42 Bom
L.R. 428
—641 (F.B.) Ref I.L.R. 1940
Nag 30
- 40 All 79 Not Foll I.L.R. 1940
Kar 470 (F.B.)
—147 Dist I.L.R. 1940
Bom 225
—341 (F.B.) Foll I.L.R.
1940 Nag 48
—465 Not Appr I.L.R. 1940
All 136
- 41 All 45 Ref I.L.R. 1940 All
599
—243 Cons 44 C.W.N. 665
- 42 All 125 Ref I.L.R. 1940 All
61
—609 (P.C.) Ref 1940 Rang
L.R. 136 I.L.R. 1940
All 499
- 43 All 20 Ref I.L.R. 1940 Bom
339
—266 Ref I.L.R. 1940 All
183
—268 Dist I.L.R. 1940 All
71
—525 Rel 1940 A.L.J. 1 =
I.L.R. 1940 All 100
—703 Ref 44 C.W.N. 740
- 44 All 7 Ref I.L.R. 1940 All
580
—190 Not Foll I.L.R. 1940
Nag 573 (F.B.)
—198 Rel I.L.R. 1940 All
79
—231 (F.B.) Ref 15 Luck
253
—258 Expl (1940) 1 M.L.J.
297
—301 (P.C.) Foll I.L.R.
1940 Kar 319
—382 Ref 1940 A.L.J. 366
—401 Foll I.L.R. 1940 Bom
415
—555 Diss I.L.R. (1940)
1 Cal 486, Ref (1940) 1
M.L.J. 877
—669 Rel. (1940) 2 M.L.J.
780
—686 Ref I.L.R. 1940 Ka
125
—708 Ref I.L.R. 1940 Ka
447
—743 Foll 21 Lah 223
- 45 All 49 Ref 1940 A.L.J. 366
—115 (F.B.) Foll 44 C.W.N.
357
—140 Rel I.L.R. 1940 Kar
287
—154 Rel (1940) 2 M.L.J.
867
—166 Ref 19 Pat 301
—179 (P.C.) Ref & D 1
I.L.R. 1940 Nag 553
—419 (P.C.) Rel I.L.R.
1940 Nag 348 (F.B.)
—548 Foll I.L.R. 1940 Nag
463
—557 Rel I.L.R. 1940 Nag
125
—581 Rel 1940 A.L.J. 113
—623 Ref I.L.R. 1940 Nag
302
—729 Ref 15 Luck 112
- 46 All 80 Rel I.L.R. 1940 Kar
119
—95 (P.C.) Rel 21 Lah 96
—233 Cons 1940 Rang
L.R. 1
—328 Ref 1940 Rang L.R.
381
—446 Rel I.L.R. 1940 Kar
123
—671 (F.B.) Rel (1940) 2
M.L.J. 556
—710 Ref I.L.R. 1940 All
185
—733 Dist I.L.R. 1940 All
517 (F.B.)
—882a Dist I.L.R. 1940 Bom
109
—894 Diss I.L.R. 1940 Kar
454

- 47 All 268 Dist I L R 1940 All
314
353 Ref 1940 Rang L R
507
368 Ref I L R 1940 All
274 (F B)
456 Ref I L R 1940 All
185
466 Rel 15 Luck 463
513 (F B) Ref 1940 A L J
42 = I L R 1940 A 178
637 (F B) Ref 19 Pat 715
743 Foll 44 C W N 1034
784 Foll I L R 1940 Nag
55
795 (P C) D s c I L R
1940 Nag 573 (F B)
823 observations of Sulai
man J Adopted (1940) 2
M L J 603-44 C W N
957 (P C) Ref 21 Lah
493 (P C)
921 Ref I L R 1940 All
185
- 43 All 171 Ref I L R 1940 Kar
447
175 Foll 1940 Rang L R
512
300 Foll I L R 1940 Nag
221
310 Dist I L R 1940 All
207
356 Ref I L R 1940 All
201
368 Dist I L R 1940 Kar
103
414 Not Foll I L R 1940
Nag 293
834 Ref I L R (1940) 1
Cal 97
- 49 All 52 Dist I L R 1940 Mad
27
57 Foll 19 Pat 369
85 Cons 1940 Rang L R
1
254 D s s I L R 1940
Bom 415-42 Bom L R
478 Ref & Rel 15 Luck
39
276 Disappr I L R 1940
All 246
297 (F B) Dist 15 Luck
95
440 Cons 1940 Rang L
R 1.
565 Foll I L R 1940 Nag
334
873 Ref I L R 1940 Nag
110
887 Ref I L R 1940 Lah
40
918 Foll I L R 1940 Nag
181
- 50 All 208 Foll I L R 1940 Nag
29
238 Ref 15 Luck 200
430 Overruled I L R 1940
All 522
608 Ref (1940) 2 M L J
303
- 50 All 678 Appr I L R 1940 All
416
713 Ref I L R 1940 Kar
230
748 Cons I L R 1940
Bom 19
767 Diss I L R (1940) 1
Cal 486-44 C W N 498
- 51 All 237 Rel I L R 1940 Kar
385
285 Dist 1940 A L J 348
382 Not Foll I L R 1940
Kar 414
478 Rel 1940 A L J 403
Ref I L R 1940 A 416
506 Ref 42 Bom L R 750
509 Rel (1940) 2 M L J
328
606 Ref I L R 1940 All
580
805 view of Niamatullah, J.,
Appr 44 C W N 294=15
Luck 1 (P C)
850 Foll 19 Pat 669
864 Diss I L R 1940 Nag
133
1027 Ref I L R 1940 All
136
1042 Ref 15 Luck 157
- 52 All 110 Dist I L R 1940 All
580 Ref I L R 1940 All
580
232 Foll I L R 1940 All
580, 596, Ref I L R
1940 All 596
391 Dist I L R 1940 Mad
27
339 Dist I L R 1940 All
509
901 Rel I L R 1940 Bom
640=42 Bom L R 592
910 Diss 42 Bom L R 663
I L R 1940 Bom 689
927 Foll I L R 1940 Nag
463 549
979 Ref I L R 1940 All
580
1005 Ref 44 C W N 580
1011 (F B) Rel 21 Lah
217
- 53 All 103 (P C) D s t 19 Pat
669
125 D s t I L R 1940 Bom
146
215 Foll I L R 1940 Nag
188
239 Ref I L R 1940 Kar
375
313 Rel 15 Luck 471
374 Foll (1940) 1 M L J
314
384 Foll 44 C W N 607
528 Ref I L R 1940 Nag
496
612 Dist I L R 1940 All
192, Ref 1940 Rang L R
512
- 54 All 140 Ref I L R 1940 All
580
- 54 All 171 (F B) Ref (1940) 2
M L J 700
183 Rel 15 Luck 332
220 (F B) Ref I L R 1940
Nag 496
240 Dist I L R 1940 All
368
293 Ref (1940) 1 M L J
939 (F B)
525 Foll I L R 1940 Nag
549
573 (F B) Diss I L R
1940 All 377 (F B), 536,
Not Foll I L R 1940 All
190, Ref 1940 A L J 88,
301
622 Appr (1940) 1 M L J
235
646 Rel I L R 1940 All
344
781 Foll I L R 1940 Nag
208
796 D s t 15 Luck 463
874 Not Foll 44 C W N
701
897 (F B) Foll 19 Pat
753 (F B)
1067 (P C) Foll I L R
1940 Nag 553, Ref 1940
Rang L R 82
1085 (F B) Foll 19 Pat
321
- 55 All 216 Foll I L R 1940 Nag
463, Rel I L R 1940
Kar 360
301 (F B) Rel I L R 1940
Nag 488
326 Ref I L R 1940 All
121
370 Ref 44 C W N 1013
(P C)
432 (F B) Not Foll 19
Pat 123 (F B)
463 Overruled I L R 1940
All 396 (F B), Diss 21
Lah 242 (F B)
512 Ref I L R 1940 All
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— 468 (P C) Ref I L R 1940
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— 711 Foll 44 C W N 221
— 766 Rel I L R 1940 All
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— 1047 Ref I L R 1940 All
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— 242 Ref 1940 Rang L R
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— 278 (F B) Rel 15 Luck
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— 426 Foll I L R 1940 Bom
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— 488 Rel I L R 1940 Kar
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— 494 Ref I L R 1940 All
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— 510 Affirmed 67 I A 212
— 573 Rel I L R 1940 Nag
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— 983 Appl I L R 1940 All
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— 200 Diss I L R 1940 Kar
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— 313 Ref I L R 1940 All
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— 495 Not Foll I L R 1940
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— 602 Rel I L R 1940 All
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— 644 Dist & Doubted I L R
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— 1041 Disc 15 Luck 229
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— 195 (F B) Foll I L R
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— 272 Appr I L R 1940 All
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— 317 (F B) Foll 19 Pat 343
— 514 Ref I L R 1940 All
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— 736 Affirmed 67 I A 197
— 880 Foll I L R 1940 All
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— 943 Diss 15 Luck 477
— 995 Ref I L R 1940 All
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— 110 Declared obsolete by
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— 114 Ref I L R 1940 All
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— 302 Diss 15 Luck 477
— 486 Foll 42 Bom L R 742
— 548 Ref 1940 Rang L R
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— 691 Ref I L R 1940 All
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— 741 Ref I L R 1940 All
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— 754 Diss I L R 1940 All
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— 115 Foll I L R 1940 All
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— 185 Ref I L R 1940 All
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— 549 (F B) Foll 19 Pat
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— 563 Overruled I L R 1940
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— 607 Ref I L R 1940 All
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— 647 Ref I L R 1940 All
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— 888 Appr I L R 1940 All
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— 275 Ref I L R 1940 All
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7 A L J 1011 Rel 1940 A L J
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8 A L J 433 (P C) Rel 1940
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9 A L J 672 Ref I L R 1940
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10 A L J 227 Dist 15 Luck 509
— 480 Ref 44 C W N 383
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15 A L J 653 Disappr I L R
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— 900 Rel 1940 A L J 443
20 A L J 601 Dist 1940 A L J
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— 924 Ref 1940 A L J 399
22 A L J 706 Ref 1940 A L J
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23 A L J 535 (P C) Ref I L R
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— 802 Ref 1940 A L J 360
24 A L J 248 Ref I L R 1940
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25 A L J 51 Rel 1940 A L J 377
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— 1139 Ref 1940 A L J 161
— 1325 Dist 1940 A L J 377
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— 792 Dist 1940 A L J 391
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— 1076 Dist 1940 A L J 104
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— 893 Dist I L R 1940 All
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— 437 Foll 1940 A L J 166
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— 1110 Foll I L R 1940 All
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— 56 Rel 1940 A L J 229
— 97 Dist 1940 A L J 504,
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— 1518 Overruled 1940 A L
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— 318 Foll 1940 A L J 203
— 363 Disappr I L R 1940
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— 817 Dist 1940 A L J 348
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— 912 Rel 15 Luck 43
— 1260 Ref I L R 1940 All
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— 33 Dist I L R 1940 All
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 27 Bom 146 Ref (1940) 1 M L J
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 31 Bom 495 Ref (1940) 1 M L J
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 39 Bom 138 Ref 15 Luck 399
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 —451 Ref 42 Bom L R 532
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 —574 Foll 19 Pat 343
 —698 Ref I L R 1940 Kar
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 —977 Ref 44 C W N 827
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 —377 Appr I L R 1940
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 —648 Foll 19 Pat 159 (FB)
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 49 Bom 172 Ref I L R 1940
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 50 Bom 162 Ref I L R 1940 All
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 —192 Appr I L R 1940
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 —439 Ref 15 Luck 270
 —680 Foll I L R 1940 Nag
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 51 Bom 125 Ref 1940 Rang L R
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 —329 Ref (1940) 1 M L J
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 —430 (FB) Foll 19 Pat
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 —450 Ref I L R 1940 All
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 —451 Ref 4^o Bom L R 457
 —455 (FB) Rel I L R
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 —771 Ref 1940 Rang L R
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 —784 Ref I L R 1940 Mad
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 —885 Ref 44 C W \ 787
 —896 Ref I L R 1940 Kar
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 —254 Ref I L R 1940 Kar
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 —597 (PC) Foll 19 Pat 90
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 —753 Ref I L R 1940 Nag
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 —543 Ref I L R 1940 Kar
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 —589 Foll I L R (1940) 1
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 —844 Ref I L R 1940 Kar
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 54 Bom 226 Appr 42 Bom L P
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 —331 Ref I L R 1940 Nag
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 —381 Foll I L R 1940 Nag
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 —837 Ref I L R 1940 Kar
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 55 Bom 69 Ref I L R 1940 All
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 —145 Not Foll I L R 1940
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— 628 Foll I L R 1910 Nag
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C)
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— 508 Foll 1910 733 (F B)
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— 255 Rel I L R 1910 Kar
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— 998 D ss I L R 1910 Bom
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25 Bom L R 147 Ref I L R
1910 Bom 370
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— 446 D st I L R 1910 Kar
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27 Bom L R 352 Ref I L R 1910
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1910 Bom 361
— 1019 Dis 1910 Rang L R
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— 1168 Foll 42 Bom L R
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28 Bom L R 656 Ref I L R 1910
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— 1000 Dist I L R 1910
Bom 140
— 1003 Rel I L R 1910 Nag
125
29 Bom L R 48 Ref 44 C W N
677
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1910 Bom 68

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— 1050 Ref 1910 Rang L R
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— 473 Rel I L R 1910 Nag
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35 Bom L R 174 Ref I L R 1910
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— 722 Cons I L R 1910 Bom
480 D st 42 Bom L R
501 Ref I L R 1910
Bom 50
— 816 (P C) Foll 42 Bom L
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— 761 Foll 42 Bom L R 532
— 807 Ref 42 Bom L R 248
— 814 Ref 42 Bom L R 248
— 1068 Dist 42 Bom L R
491
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135
37 Bom L R 235 Foll 42 Bom L
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773
38 Bom L R 700 (P C) Ref
I L R 1910 Kar 249

- 38 Bom L.R. 754 Rel I L R
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—808 Foll 42 Bom L.R. 443
—929 Ref I L R 1940 Kar
130
—1192 Expl I L R 1940
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—1303 Disappr 42 Bom L.R.
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1940 Kar 249
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—815 Foll 1940 Rang L.R.
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—1156 Disappr I L R 1940
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—418 Foll 42 Bom L.R. 180
—704 (P.C.) Dst I L R
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—811 (P.C.) Ref I L R
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—952 Dst I L R 1940 Bom
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—974 Foll 42 Bom L.R. 528
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—1182 Dst I L R 1940
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—1192 Foll 1 Bom L.R.
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41 Bom L.R. 219 Appr I L R
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—297 Foll 42 Bom L.R. 532
—575 Foll 42 Bom L.R. 878
—718 (P.C.) Dst 42 Bom
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—787 Dst 42 Bom L.R. 443
—937 Ref 42 Bom L.R. 223
—1114 Dst I L R 1940
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—1326 Foll I L R 1940
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42 Bom L.R. 199 (I.C.) Ref
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—612 Dst 44 C.W.N. 847
—742 Ref 1940 Rang L.R.
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—781 Appr I L R 1940 All
351
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—369 Foll I L R 1940 All
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- 5 Cal 882 Ref 67 I A 11=I L
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—460 Rel I L R (1940) 1
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—764 Foll I L R 1940 All
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8 Cal 51 (P.C.) Ref 1940 Rang
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—788 Ref I L R (1940) 1
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9 Cal 138 Ref 44 C.W.N. 718
—244 Expl & Diss 44 C.W.
N. 114
—293 Dst 44 C.W.N. 46
—580 (F.B.) Foll 44 C.W.N.
114
10 Cal 19 (I.C.) Ref I L R
(1940) 1 Cal 33
—324 (P.C.) Dst 44 C.W.N.
1063
—609 Ref 44 C.W.N. 240
—616 (P.C.) Rel I L R 1940
Nag 316
—626 (P.C.) Rel 19 Pat
618 (F.B.)
11 Cal 684 (P.C.) Ref 19 Pat
433
12 Cal 209 Ref 44 C.W.N. 114
—563 Ref 44 C.W.N. 576
13 Cal 57 Ref 44 C.W.N. 753
—104 Foll 13 Luck 376
—237 Ref 13 Luck 265
—262 Ref (1940) 2 M.L.J.
456
—334 Rel I L R 1940 Kar
431
14 Cal 147 (P.C.) Ref I L R
1940 Nag 569
—446 Foll 44 C.W.N. 357
—583 Ref 1940 Rang L.R.
188
—636 (F.B.) Ref 19 Pat 289
—649 Ref 44 C.W.N. 895
—707 Rel I L R 1940 Kar
431
15 Cal 109 Ref I L R (1940) 1
Cal 231=44 C.W.N. 82
—247 Ref 15 Luck 526
—321 (P.C.) Ref 19 Pat 494
—593 (F.B.) Ref I L R
(1940) 1 Cal 231-44 C.
W.N. 82
—771 Ref (1940) 1 M.L.J.
48 (F.B.)
16 Cal 9 Ref 44 C.W.N. 641
—194 Foll 42 Bom L.R. 750

- 16 Cal 457 Disappr I L R 1940
All 318
—465 Disappr I L R 1940
All 318
—687 (P.C.) Dst 19 Pat
688
—795 Foll 44 C.W.N. 1103
17 Cal 268 Foll I L R 1940
Nag 334 Ref 1940
Rang L.R. 82
—498 (P.C.) Ref 1940 A.L.J.
504
—668 Rel I L R 1940 Kar
36
18 Cal 45 Ref I L R (1940) 1
Cal 33
—556 (F.B.) Foll I L R
1940 Nag 74, Doubtful
191 at 578
19 Cal 146 Foll I L R 1940 Nag
502
—507 (P.C.) Ref I L R
1940 Mad 27
—699 Ref I L R (1940) 1
Cal 442
20 Cal 29 Disc 19 Pat 354
—433 Dst 44 C.W.N. 1036
—508 Foll I L R 1940 Nag
35
—546 Appr 19 Pat 398
—708 (F.B.) Rel 19 Pat
273
21 Cal 8 Ref 1940 A.L.J. 479
—157 Ref 1940 Rang L.R.
136
—311 Ref 1940 Rang L.R.
485
—383 Ref 19 Pat 824
—401 Rel 21 Lah 521
—612 Foll 44 C.W.N. 849
912
—844 Dst 44 C.W.N. 129
—904 Ref 44 C.W.N. 233
—599 I L R (1940) 1 Cal
235 (1940) 1 M.L.J. 97
—671 A 11 42 Bom L.
R. 331 (P.C.)
—979 Dst I L R 1940 Kar
470 (F.B.)
22 Cal 558 Foll 19 Pat 838
—648 Ref 1940 Rang L.R.
129
—752 Dst 42 Bom L.R. 750
—767 (F.B.) Foll 19 Pat 289
23 Cal 339 Foll 19 Pat 159 (F
B)
—442 Rel 13 Luck 468
—592 Ref 42 Bom L.R. 640
21 Lah 470 (P.C.)
—799 Ref 1940 Rang L.R.
135
—829 Dst I L R 1940 Nag
334
—983 Ref I L R 1940 Kar
74 (F.B.)
24 Cal 143 (S.B.) Reviewed 19
Pat 893 (F.B.)
—309 Ref I L R (1940) 1
Cal 110
—350 (F.B.) Not Foll 19
Pat 159 (F.B.)
—385 Ref 15 Luck 233
—540 Ref 44 C.W.N. 912

- 24 Cal 677 Rel 44 C W N 760
 —725 Ref I L R (1910) 1
 Cal 393
 —759 Rel I L R 1910 Nag
 496
- 25 Cal 179 (P C) Rel 21 Lah
 63
 —662 Disc I L R (1910) 1
 Cal 415 Overruled 44
 C W N 513 (I C)
- 26 Cal 361 (F B) Foll I L R
 1910 Bom 426
 —449 Dist I L R 1910 Kar
 360
 —516 Ref 19 Lat 398
 —576 Dist 1910 Rang L R
 256
 —677 (F B) Ref 19 Pat
 618 (F B)
 —734 Ref I L R 1910 All
 344
 —839 Rel I L R 1910 Nag
 198
- 27 Cal 11 Foll 42 Bom L R 231
 —276 Not Foll I L R 1910
 Nag 55
 —483 Ref 19 Pat 838
 —785 Ref I L R 1910 Kar
 508
- 28 Cal 211 Ref I L R 1910 Kar
 74 (F B)
 —238 D c 19 Pat 354
 —334 Ref 44 C W N 745
 —441 Appr I L R (1910) 1
 Cal 33
 —475 (P C) Ref 44 C W N
 912
 —591 Ref 15 Luck 404
 —652 (F B) R I L R 1910
 Kar 74 (F B)
- 29 Cal 67 D t 19 Pat 273
 —211 Rel I L R 1910 Kar
 113
 —260 D s 42 Bom L R 876
 —385 Ref 44 C W N 315
 —409 Rel I L R 1910 Kar
 123
 —410 Rel I L R 1910 Kar
 431
 —415 Ref 1910 A L J 97
 —503 D t 44 C W N 1056
 —726 (F B) Ref I L R 1910
 Kar 74 (F B)
- 30 Cal 112 Foll 15 Luck 19
 —477 Ref 44 C W N 792
 —539 (P C) Foll I L R
 1910 Nag 553
 —583 (F B) D s 1910
 Rang L R 492
 —606 Ref 1910 Rang L R
 129
 —753 Dist 44 C W N 240
 —910 Ref 1910 A L J 97
- 31 Cal 214 Cons 44 C W N 457
 —667 Ref (1910) 2 M L J
 456
 —685 Ref 1910 A L J 26
 —1043 Dist (1910) 2 M L J
 334
- 32 Cal 62 Not Appl I L R 1910
 All 416
 —129 (P C) Appl 19 Pat
 600
- 32 Cal 386 (F B) Revic ed 19
 Pat 893 (F B)
 —605 (P C) Ref 19 Pat 321
 —643 Appr I L R 1910 All
 61
 —837 Expl I L R (1910) 1
 Cal 110
 —1077 Ref (1910) 1 M L J
 766 (F B)
 —1107 Foll 42 Bom L R
 532
- 33 Cal 116 (P C) Ref I L R
 (1910) 1 Cal 14
 —613 D s 44 C W N 240
 —789 Ref 44 C W N 327
 —927 Ref I L R 1910 All
 201
 —1040 Ref 1 Lah 124
 —1047 Ref 15 Luck 337
 —1119 Rel I L R (1910) 1
 Cal 161
 —1278 Ref (1910) 1 M L J
 766 (F B)
- 34 Cal 163 (F B) Not Foll I L R
 1910 Nag 55
 —329 (P C) Rel I L R
 1910 Nag 20 1910 A L
 J 348
 —372 Rel I L R 1910 Nag
 573 (F B)
 —551 Overruled n 37 Cal
 642 (F B) D s 42 Bom
 L R 231
 —926 Ref 15 Luck 468
 —999 Ref (1910) 1 M L J
 872
- 35 Cal 202 (P C) Dist I L R 1910
 Nag 334 Rel 15 Luck
 43 I L R 1910 Nag 519
 —298 Ref 44 C W N 793
 —394 Ref I L R 1910 Bom
 17
 —551 (P C) Foll I L R
 1910 Nag 549
 —1061 Ref 1910 Rang 82
- 36 Cal 193 (F B) Appr 67 I A
 82 (1910) 1 M L J 446
 (1910) 1 Cal 291 (P C)
 —415 Ref I L R 1910 Kar
 74 (F B)
 —869 Ref 1910 Rang 219
- 37 Cal 75 Rel 19 Pat 618 (F B)
 —128 (F B) Ref 21 Lah
 493 (1910) 2 M L J 903
 —44 C W N 957 (P C)
 —224 Rel I L R (1910) 1
 Cal 79
 —418 (P C) D c I L R
 1910 Lah 40
 —547 Dist I L R 1910 All
 318
- 38 Cal 169 (S B) Appr (1910) 2
 M L J 811 (P C)
 —463 Rel I L R 1910 All
 360
 —832 Dist 44 C W N 426
 —880 Rel (1910) 2 M L J
 556 Ref 19 Pat 715
 —936 D s 44 C W N 912
- 39 Cal 157 Ref I L R 1910 Kar
 119 Cons 1910 Rang L
 R 502
- 39 Cal 232 (P C) Foll Ref I L
 R 1910 Nag 55
 —284 (F B) Ref I L R 1910
 Bom 480 D s 42 Bom
 L R 501
 —353 Ref 44 C W N 36
 —560 Rel I L R (1910) 1
 Cal 468
 —704 Ref 1910 Rang L R
 59 (F B)
 —835 D t I L R 1910 Nag
 125
 —953 (P C) Foll 44 C W N
 82
- 40 Cal 71 Ref I L R 1910 Kar
 74 (F B)
 —150 Dist 44 C W N 74
 —518 D s 44 C W N 426
- 41 Cal 590 (P C) Foll I L R
 1910 Nag 37
 —642 Appr 44 C W N 513
 (P C)
 —713 Ref 42 Bom L R 693
 —819 Ref 15 Luck 290
 Rel 15 Luck 107
 —972 (P C) Ref I L R
 1910 Nag 74 15 Luck
 191 Rel 19 Pat 578
 —990 Ref 44 C W N 912
 —1013 Ref I L R 1910
 Kar 287 435
 —1092 D s 44 C W N 129
 —1125 (S B) Foll 19 Pat
 753 (F B)
- 42 Cal 1 D s 1910 Rang L R
 492
 —72 (P C) Expl 19 Pat
 393 Ref 21 Lah 31
 Rel I L R 1910 Nag 306
 21 Lah 63
 —286 Foll 19 Pat 424
 —469 (P C) Rel I L R 1910
 Kar 447
 —1043 Ref I L R 1910
 Bom 127
- 43 Cal 90 Foll 42 Bom L R 4 8
 Ref I L R 1910 Nag 141
 (F B)
 —153 Dist I L R 1910 Bom
 397
 —173 Ref I L R 1910 Nag
 488
 —178 Foll 44 C W N 141
 —248 Ref 44 C W N 793
 —321 (P C) Foll I L R
 1910 Nag 316
 —707 (P C) Ref 19 Pat
 600 (I B)
 —1085 Ref 44 C W N 969
 —118 Rel I L R 1910 Kar
 83
 —1152 Ref I L R 1910 Kar
 414
- 44 Cal 36 Ref I L R 1910
 Bom 299 (F B)
 —383 Ref 44 C W N 463
 —567 Ref 21 Lah 40
 Rel 15 Luck 524
 —627 Ref (1910) 1 M L J
 329
 —650 R f I L R 1910 Kar
 414

- 38 Bom LR 754 Rel I LR
1940 Kar. 1
808 Foll 42 Bom LR 443
929 Ref I LR 1940 Kar
130
1192 Expl I LR 1910
Kar 273
1303 Disappr 4th Bom I R
867
- 39 Bom LR 1 (P.C.) Rel I LR
1940 Kar 249
138 Rel I LR 1940 Kar
1
815 Foll 1940 Rang LR
497
1156 Disappr I I R 1940
Bom 487
- 40 Bom LR 324 (F.B.) Rel I L
R 1940 Kar 36
387 Ref 42 Bom LR 233
418 Foll 42 Bom LR 180
704 (P.C.) Dst I LR
1940 Kar 133
811 (P.C.) Ref I LR
1940 Bom 225
952 Dst I LR 1940 Bom
526
974 Foll 42 Bom LR 528
Ref I LR 1940 Bom 581
1183 Dst I LR 1940
Bom 42
1192 Foll 1 Bom LR
382
- 41 Bom LR 219 Appr I LR
1940 Bom 153
297 Foll 42 Bom LR 532
573 Foll 42 Bom LR 878
718 (P.C.) Dst 42 Bom
LR 832
787 Dst 4th Bom LR 443
937 Ref 42 Bom LR 223
1114 Dst I LR 1940
Bom 322
1150 (P.C.) Ref 42 Bom
LR 89
1326 Foll I LR 1940
Bom 322
- 42 Bom LR 199 (P.C.) Ref
I LR 1940 Bom 480
- I LR CALCUTTA SERIES
- 2 Cal 208 Ref I I R (1940) 1
Cal 33=44 C W N 149
233 (I.C.) Ref 1940 Rang
LR 512
293 Ref 42 Bom LR 621
(P.C.) Ref I LR (1940) 1
Cal 415
- 3 Cal 198 (P.C.) Rel 19 Pat 618
(F.B.)
724 Foll 19 Pat. 832
351 Foll 19 Pat 669
612 Dst 44 C W N 847
742 Ref 1940 Rang LR
183
781 Appl I LR 1940 All
351
- 4 Cal 360 Rel I I R (1940) 1
Cal 14
369 Foll I LR 1940 All
71
- 5 Cal 593 Foll I LR 1940 Nag
331
- 5 Cal 882 Ref 67 LA 11=I L
R (1940) 1 Cal 255=
(1940) 1 M I J 97 (P.C.)
910 Ref I LR (1940) 1
Cal 183=44 C W N 93
- 6 Cal 394 (P.C.) Dst 19 Pat
832 Ref 13 Luck 509
Rel 19 Pat 844
460 Rel I LR (1940) 1
Cal 14
764 Foll I LR 1940 All
416
- 7 Cal 140 Dst I LR 1940 Mad
27
178 Ref 42 Bom LR 621
(1940) I LR 1 Cal 415
401 Ref 44 C W N 873
616 Appr I LR 1940 All
625 (I.C.)
- 8 Cal 51 (P.C.) Ref 1940 Rang
LR 82
238 Ref 44 C W N 1033
455 Ref 19 Pat 715
788 Ref I LR (1940) 1
Cal 183=44 C W N 93
- 9 Cal 138 Ref 44 C W N 718
244 Expl & Diss 44 C W
N 114
293 Dst 44 C W N 420
580 (F.B.) Foll 44 C W N
114
- 10 Cal 19 (P.C.) Rel I LR
(1940) 1 Cal 33
324 (P.C.) Dst 44 C W N
1063
609 Ref 44 C W N 240
616 (P.C.) Rel I LR 1940
Nag 316
626 (P.C.) Rel 19 Pat
618 (F.B.)
- 11 Cal 684 (P.C.) Ref 19 Pat
433
12 Cal 209 Ref 44 C W N 114
563 Ref 44 C W N 576
- 13 Cal 57 Ref 44 C W N 753
104 Foll 13 Luck 376
237 Ref 13 Luck 265
262 Ref (1940) 2 M L J
456
334 Rel I LR 1940 Kar
431
- 14 Cal 147 (P.C.) Ref I LR
1940 Nag 569
446 Foll 44 C W N 357
583 Ref 1940 Rang LR
188
696 (F.B.) Ref 19 Pat 289
649 Ref 44 C W N 895
707 Rel I LR 1940 Kar
431
- 15 Cal 109 Ref I LR (1940) 1
Cal 231=44 C W N 8
242 Ref 15 Luck 526
521 (P.C.) Ref 19 Pat 494
593 (F.B.) Ref I LR
(1940) 1 Cal 231=44 C
W N 82
771 Ref (1940) 1 M L J
482 (F.B.)
- 16 Cal 9 Ref 44 C W N 641
194 Foll 42 Bom LR 750
- 16 Cal 457 Disappr I LR 1940
All 318
465 Disappr I LR 1940
All 318
682 (P.C.) Dst 19 Pat
688
795 Foll 44 C W N 1103
- 17 Cal 268 Foll I LR 1940
Nag 334 Ref 1940
Rang LR 87
48 (P.C.) Ref 1940 A L J
304
568 Rel I LR 1940 Kar
36
- 18 Cal 45 Ref I LR (1940) 1
Cal 33
356 (F.B.) Foll I LR
1940 Nag 74 Doubtful
19 Pat 578
- 19 Cal 146 Foll I LR 1940 Nag
502
507 (P.C.) Ref I I R
1940 Mad 27
699 Rel I LR (1940) 1
Cal 442
- 20 Cal 29 Dst 19 Pat 354
453 Dst 44 C W N 1036
508 Foll I LR 1940 Nag
35
546 Appl 19 Pat 398
708 (F.B.) Rel 19 Pat
273
- 21 Cal 8 Ref 1940 A L J 479
157 Ref 1940 Rang LR
136
311 Ref 1940 Rang LR
483
383 Ref 19 Pat 824
401 Rel 21 Lah 521
612 Foll 44 C W N 849
912
841 Dst 44 C W N 199
904 Ref 44 C W N 733
589 I LR (1940) 1 Cal
235 (1940) 1 M L J 97
=671 A 11=42 Bom L
R 331 (P.C.)
979 Dst I LR 1940 Kar
470 (F.B.)
- 22 Cal 558 Foll 19 Pat 838
648 Ref 1940 Rang LR
129
752 Dst 4 Bom LR 750
767 (F.B.) Foll 19 Pat 289
- 23 Cal 339 Foll 19 Pat 159 (F
B)
442 Rel 15 Luck 468
39 Ref 4 Bom LR 640
21 Lah 40 (P.C.)
799 Ref 1940 Rang LR
135
829 Dst I I R 1940 Nag
334
943 Ref I LR 1940 Kar
74 (F.B.)
- 24 Cal 143 (S.B.) Rev ed 19
Pat 293 (F.B.)
309 Ref I LR (1940) 1
Cal 110
350 (F.B.) Not Foll 19
Pat 159 (F.B.)
385 Ref 15 Luck 253
546 Ref 44 C W N 912

24 Cal 677 Ref 44 C.W.N. 760.
 — 725 Ref I L.R. (1940) 1
 Cal 303
 — 759 Ref I L.R. 1940 Nag
 496
 25 Cal 179 (P.C.) Ref 21 Lah
 61
 — 662 Disc I L.R. (1940) 1
 Cal 415 Overruled 44
 C.W.N. 513 (P.C.)
 26 Cal 361 (F.B.) Foll I L.R.
 1940 Bom 4-6
 — 449 Dist I L.R. 1940 Kar
 360
 — 546 Ref 19 Pat. 398
 — 576 Dist 1940 Rang L.R.
 266
 — 677 (F.B.) Ref 19 Pat
 618 (F.B.)
 — 734 Ref I L.R. 1940 All
 341
 — 839 Rel I L.R. 1940 Nag
 198
 27 Cal 11 Foll 42 Bom L.R. 231
 2,6 Not Foll I L.R. 1940
 Nag 55
 — 483 Ref 19 Pat 838
 — 785 Rel I L.R. 1940 Kar
 508
 28 Cal 211 Ref I L.R. 1940 Kar
 74 (F.B.)
 — 238 Disc 19 Pat 354
 — 334 Ref 44 C.W.N. 745
 — 441 Appr I L.R. (1940) 1
 Cal 33
 — 475 (P.C.) Ref 44 C.W.N.
 912
 — 591 Ref 15 Luck 404
 — 652 (F.B.) R I L.R. 1940
 Kar 74 (F.B.)
 29 Cal 67 Dist 19 Pat 275
 — 211 Rel I L.R. 1940 Kar
 113
 — 260 Diss 42 Bom L.R. 876
 — 385 Ref 44 C.W.N. 315
 — 409 Rel I L.R. 1940 Kar
 123
 — 410 Rel I L.R. 1940 Kar
 431
 — 415 Ref 1940 A.L.J. 97
 — 583 Dist 44 C.W.N. 1056
 — 726 (F.B.) Ref I L.R. 1940
 Kar 74 (F.B.)
 30 Cal 112 Foll 15 Luck 19
 — 477 Ref 44 C.W.N. 792
 — 539 (P.C.) Foll I L.R.
 1940 Nag 553
 — 583 (F.B.) Disc 1940
 Rang L.R. 492
 — 696 Ref 1940 Rang L.R.
 129
 — 755 Dist 44 C.W.N. 240
 — 910 Ref 1940 A.L.J. 97
 31 Cal 214 Cons 44 C.W.N. 457
 — 667 Ref (1940) 2 M.L.J.
 456
 — 885 Rel 1940 A.L.J. 26
 — 1043 Dist (1940) 2 M.L.J.
 334
 32 Cal 12 Not Appl I L.R. 1940
 All 416
 — 129 (P.C.) Appl 19 Pat
 Gen

32 Cal 380 (F.B.) Reviewed 19
 Pat 893 (F.B.)
 — 605 (P.C.) Ref 19 Pat 3-1
 — 643 Appr I L.R. 1940 All
 61
 — 837 Expl I L.R. (1940) 1
 Cal 110
 — 1077 Ref (1940) 1 M.L.J.
 766 (F.B.)
 — 1107 Foll 42 Bom L.R.
 332
 33 Cal 116 (P.C.) Ref I L.R.
 (1940) 1 Cal 14
 — 613 Dist 44 C.W.N. 240
 — 789 Ref 44 C.W.N. 37
 — 977 Ref I L.R. 1940 All
 201
 — 1040 Ref 11 Lah 14
 — 1047 Ref 15 Luck 337
 — 1119 Rel I L.R. (1940) 1
 Cal 161
 — 1278 Ref (1940) 1 M.L.J.
 — 66 (F.B.)
 34 Cal 163 (F.B.) Not Foll I L.R.
 1940 Nag 55
 — 329 (P.C.) Ref I L.R.
 1940 Nag 70 1940 A.L.
 J 348
 — 372 Rel I L.R. 1940 Nag
 573 (F.B.)
 — 551 Overruled in 37 Cal
 642 (F.B.), Diss 42 Bom
 L.R. 231
 — 926 Ref 15 Luck 468
 — 999 Ref (1940) 1 M.L.J.
 872
 35 Cal 202 (P.C.) Dist I L.R. 1940
 Nag 334 Rel 15 Luck
 43 I L.R. 1940 Nag 519
 — 298 Ref 44 C.W.N. 793
 — 394 Ref I L.R. 1940 Bom
 17
 — 551 (P.C.) Foll I L.R.
 1940 Nag 549
 — 1061 Ref 1940 Rang 82
 36 Cal 193 (F.B.) Appr 67 L.A.
 82 = (1940) 1 M.L.J. 446 =
 (1940) 1 Cal 291 (P.C.)
 — 415 Ref I L.R. 1940 Kar
 74 (F.B.)
 — 869 Ref 1940 Rang 219
 37 Cal 75 Ref 19 Pat 618 (F.B.)
 — 128 (F.B.) Ref 21 Lah
 493 (1940) 2 M.L.J. 903-
 44 C.W.N. 957 (P.C.)
 — 224 Rel I L.R. (1940) 1
 Cal 79
 — 418 (P.C.) Disc I L.R.
 1940 Lah 40
 — 547 Dist I L.R. 1940 All
 318
 38 Cal 169 (S.B.) Appr (1940) 2
 M.L.J. 811 (P.C.)
 — 468 Rel I L.R. 1940 All
 360
 — 832 Dist 44 C.W.N. 426
 — 830 Rel (1940) 2 M.L.J.
 556
 — 936 Disc 44 C.W.N. 912
 39 Cal 157 Ref I L.R. 1940 Kar
 119 Cons 1940 Rang L.
 R 502

39 Cal 232 (P.C.) Foll Ref I L.
 R 1940 Nag 55
 — 284 (F.B.) Ref I L.R. 1940
 Bom 480; Diss 42 Bom
 L.R. 501
 — 533 Ref 44 C.W.N. 3
 — 580 Rel I L.R. (1940) 1
 Cal 468
 — 704 Ref 1940 Rang L.R.
 59 (F.B.)
 — 855 Dist I L.R. 1940 Nag
 125
 — 953 (P.C.) Foll 44 C.W.N.
 8
 40 Cal 71 Ref I L.R. 1940 Kar
 74 (F.B.)
 — 150 Dist 44 C.W.N. 71
 — 518 Dist 44 C.W.N. 41
 41 Cal 590 (P.C.) Foll I L.R.
 1940 Nag 37
 — 617 Appr 44 C.W.N. 513
 (P.C.)
 — 743 Ref 4-1 km I R t 13
 — 819 Ref 15 Luck 290
 Rel. 15 Luck 107
 — 972 (P.C.) Ref I L.R.
 1940 Nag 74, 15 Luck
 191 Rel 1940 Nag 578
 — 990 Ref 44 C.W.N. 91.
 — 1013 Ref I L.R. 1940
 Kar 287, 135
 — 1092 Dist 44 C.W.N. 129
 — 1125 (S.B.) Foll 19 1st
 733 (F.B.)
 42 Cal 1 Dist 1940 Rang L.R.
 492
 — 72 (P.C.) Expl 19 Pat
 993, Rel 21 Lah 231
 Rel I L.R. 1940 Nag 306,
 21 Lah 63
 — 286 Foll 19 Pat 424
 — 469 (P.C.) Rel I L.R. 1940
 Kar 447
 — 1043 Ref I L.R. 1940
 Bom 127
 43 Cal 90 Foll 42 Bom L.R. 428
 Ref I L.R. 1940 Nag 141
 (F.B.)
 — 153 Dist I L.R. 1940 Bom
 397
 — 173 Rel I L.R. 1940 Nag
 468
 — 178 Foll 44 C.W.N. 141
 — 248 Ref 44 C.W.N. 793
 — 521 (P.C.) Foll I L.R.
 1940 Nag 316
 — 707 (P.C.) Ref 19 1st
 600 (F.B.)
 — 1068, Ref 44 C.W.N. 960
 — 1128 Rel I L.R. 1940 Kar
 83
 — 1152 Ref I L.R. 1940 Kar
 414
 44 Cal 367 Ref I L.R. 1940
 Bom 209 (F.B.)
 — 388 Ref 44 C.W.N. 41
 — 567 Ref 21 Lah 4-1
 Rel 15 Luck 574
 — 527 Ref (1940) 1 M.L.J.
 321
 — 530 Ref I L.R. 1940
 414

- 44 Cal 662 Ref I L R 1940
 All 542
 663 Rel 1940 A L J 470
 689 Dist (1940) 1 M L J
 155
 701 Affirmed 44 C W N
 1150
 759 (P C) Ref 1940
 A L J 161,
 789 Dist (1940) 2 M L J
 23
 954 Rel (1940) 2 M L J
 881
 978 Disappr 44 C W N
 985
- 45 Cal 434 Cons I L R (1940) 1
 Cal 527
 574 Ref I L R (1940) 1
 Cal 216
 833 Rel 44 C W N 38
 878 (P C) Dist & Foll
 I L R 1940 Kar 200
 I L R 1940 Nag 553 Ref
 15 Luck 175
- 46 Cal 566 Ref I L R 1940 All
 91
 663 Dist I L R 1940 Kar
 342
 962 Ref 44 C W N 637
- 47 Cal 597 Ref I L R (1940) 1
 Cal 231
 662 (P C) Dist I L R
 1940 Kar 302
 924 Ref I L R 1940 Kar
 447
- 48 Cal 61 Ref 1940 Rang I R
 199
 481 (P C) Ref I L R
 1940 All 121
 193 (P C) Rel 1 Lah
 199
 499 Ref 1940 Rang L R
 145
 509 (P C) Rel 19 Pat
 578
 522 Ref 15 Luck 19
 605 (F B) Ref 44 C W
 N 118.
 879 Cons 1940 Rang L R
 1
- 49 Cal 815 Dss (1940) 2 M L J
 110 (S B)
- 50 Cal 292 Ref I L R 1940 Nag
 48
 356 Ref 1940 Rang L R
 93
 549 Ref 1940 Rang L R
 408
 610 Ref I L R (1940) 1
 Cal 183
 867 Diss 42 Bom L R 74*,
 Dist 44 C W N 893
 894 Ref 44 C W N 783
 929 (P C) Foll I L R
 1940 Nag 553
 992 Appr 21 Lah 400
- 51 Cal 361 (P C) Ref I L R
 1940 Nag 225
 348 Foll I L R 1940 Nag
 37
- 51 Cal 631 (P C) Rel 19 Pat
 893 (F B), Ref I L R.
 (1940) 1 Cal 183, Dist
 19 Pat 275
 669 Ref 44 C W N 935
 715 Dist I L R 1940 Nag
 496
- 52 Cal 1 Ref I L R 1940 All
 274 (F B)
 138 Not Foll I L R 1940
 Nag 188
 197 (P C) Dist 44 C W N
 651
 125 Dss 44 C W N 357
 559 Disappr 42 Bom L R
 867
 766 Dist I L R 1940 Nag
 569
 828 (F B) Foll 44 C W N
 438 I L R (1940) 1 Cal
 486
 1153 Ref 1940 Rang L R
 244
- 53 Cal 51 Ref I L R (1940) 1
 Cal 372
 88 Dist I L R 1940 All
 207
 166 Rel 44 C W N 392
 181 Appr 21 Lah 151
 197 (F B) Foll 19 Pat
 433
 350 (I B) Rel I L R 1940
 Kar 431
 417 observations of Rankin
 J Disappr 44 C W N 808
 561 Ref 44 C W N 101
 781 (F B) Ref 44 C W N
 827
 824 Ref I L R 1940 Kar
 414
 844 Ref 1940 Rang L R
 512
- 54 Cal 126 Expl I L R (1940) 1
 Cal 14, Ref (1940) 2
 M L J 587
 189 Ref I L R 1940 Kar
 347
 303 Rel I L R 1940 Kar
 431
 307 Ref 44 C W N 340
 586 (P C) Dist 19 Pat
 275
 969 Dist 44 C W N 1069
- 55 Cal 219 Foll I L R 1940 Nag
 538
 371 Dist I L R 1940 Kar
 249
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- 56 Cal 1 Appl I L R 1940 All
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- 56 Cal 290 Rel I L R 1940 Kar.
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 835 Rel I L R 1940 Kar
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 840 Ref 44 C W N 340
- 57 Cal 25 Rel 15 Luck 404
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 1228 (F B) Rel I L R.
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 1302 Foll I L R (1940) 1
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- 58 Cal 539 Diss (1940) 1 M L J
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 628 Ref 44 C W N 1034
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- 59 Cal 76 Foll 19 Pat 524
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 728 Ref 44 C W N 1136
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 1308 Rel I L R (1940) 1
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 1314 Foll 19 Pat 433
 1334 Foll 19 Pat 159 (F B)
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- 60 Cal 87 Ref I L R 1940 Kar
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1176 Dss I L R 1910
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1265 Appr 42 Bom L R
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1339 Ref 19 Pat 369
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749 Diss 21 Lah 102
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1099 Appr I L R (1910)
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20 C W N 481 Foll 19 Pat 208
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 — 356 Diss I L R (1940) 1
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 — 548 Ref 44 C W N 993
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 — 1233 Rel I L R (1940) 1
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 — 1275 D ss I L R (1940) 1
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 — 499 Rel 44 C W N 694
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 — 605 Ref I L R (1940) 1
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 — 417 Affirmed 44 C W N
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10 W.R. 8 (F.B.) Ref 1940 Rang
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20 W.R. 44 Ref 19 Pat 553 (F.B.)
—189 Ref 44 C.W.N 873
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—94 Dist 19 Pat 111
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10 C.L.J. 263 Ref 44 C.W.N 149
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20 C.L.J. 107 Foll 19 Pat 1
21 C.L.J. 459 Ref 44 C.W.N 793
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—610 Dist 19 Pat 852
26 C.L.J. 590 Rel 44 C.W.N
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27 C.L.J. 100 Dss 1940 Rang
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—141 Rel 15 Luck 524
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—320 Rel I.L.R. (1940) 1
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—603 Dist 44 C.W.N 357
28 C.L.J. 497 Foll 19 Pat 852
30 C.L.J. 37 Ref 44 C.W.N 991
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34 C.L.J. 256 Ref 42 Bom L.R.
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57 C.L.J. 500 Ref 44 C.W.N 993
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62 C.L.J. 67 Ref 44 C.W.N 991
63 C.L.J. 105 Dist I.L.R. (1940)
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—415 Foll 19 Pat 301
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—340 Dist I.L.R. 1940 Nag
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—526 Rel I.L.R. 1940 Nag
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10 Lah 1 Foll I.L.R. 1940 Nag
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— 524 Rel 21 Lah 63
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— 106 Disc 19 Pat 354
— 255 Dist 1940 Rang L R
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— 399 Ref (1940) : M L J
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— 730 Foll 21 Lah 50 (F B)
15 Lah 63 Dist I L R 1940 Nag
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— 652 Ref I L R 1940 All
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— 667 Foll 19 Pat 870 (F B)
— 694 Dist I L R 1940 Nag
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— 698 Ref 15 Luck 471
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— 173 (F B) Dist 21 Lah
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— 392 Rel (1940) : M L J
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— 283 Ref 1940 Rang L R
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7 Mad 387 Ref (1940) : M L J
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— 539 Foll 19 Pat 507
— 548 Foll 42 Bom L R 283
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— 557 Ref I L R 1940 Mad
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9 Mad 463 Foll 19 Pat 208
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10 Mad 334 Ref I L R 1940
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11 Mad 5 (F B) Foll I L R
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— 239 Ref I L R 1940 All
235=1940 A L J 593 (P
C)
— 411 Dist I L R 1940 All
360
13 Mad 24 Ref (1940) : M L J
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— 69 Rel 1940 A L J
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15 Mad 345 Appr I L R 1940
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— 424 Doubt (1940) 2
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16 Mad 20 Ref (1940) 2 M L J
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17 Mad 235 (F B) Foll 1940
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— 309 Appr I L R 1940
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18 Mad 33 Ref I L R 1940 Kar
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— 415 Not Foll I L R 1940
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— 496 Rel I L R 1940 Nag
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19 Mad 38 Foll (1940) : M L J
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— 350 Rel 15 Luck 399
20 Mad 432 Dist (1940) 2 M L J
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21 Mad 58—8 M L J 9 Ref
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— 116=8 M L J 43 (F B)
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— 167 Ref 19 Pat 393
— 172 Disc 19 Pat 1
— 179 (F B) Foll (1940) 2
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— 261=8 M L J 18 Rel
(1940) : M L J 537
— 497 Foll 42 Bom L R 283
22 Mad 68 (F B) Foll 42 Bom
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— 293 Ref I L R 1940 Nag
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— 408 Diss 1940 Rang L R
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23 Mad 28 Ref 15 Luck 253
— 84 Ref (1940) 2 M L J
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— 94 Ref 1940 Rang L R
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— 177 Ref 1940 A L J 598—
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— 306=10 M L J 307 Ref
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— 326 Ref I L R 1940 Kar
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 — 484
 — 646 Const (1910) 1 M.L.J.
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 25 Mad 61 (P.C.) Ref I.L.R.
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 — 555 Foll 42 Bom L.R. 428
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 — 635 Foll 19 Pat 8, 2
 — 690 (F.B.) D.sc I.L.R.
 1940 Nag 573 (F.B.)
 26 Mad 437 Ref (1910) 2 M.L.J.
 570
 — 499 Foll I.L.R. 1940 Nag
 63
 — 505 Ref (1940) 1 M.L.J.
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 — 509 Ref (1940) 1 M.L.J.
 288
 — 599 D.sc 1940 Rang I.R.
 512
 — 662 (F.B.) Ref (1940) 2
 M.L.J. 760
 — 673 (F.B.) Foll (1940) 2
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 27 Mad 45 D.st (1940) 2 M.L.J.
 239
 — 61 Rel 1940 A.L.J. 97
 — 71 Rel (1940) 2 M.L.J.
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 — 112 13 M.L.J. 311 Rel
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 — 243 14 M.L.J. 84 (F.B.)
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 28 Mad 50=14 M.L.J. 401
 (F.B.) Rel (1940) 1 M.L.
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 — 394 Rel (1940) 1 M.L.J.
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 — 466 (F.B.) Ref 15 Luck
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 29 Mad 126 (F.B.) Ref I.L.R.
 1940 Kar 74 (F.B.)
 — 190 Ref 1940 Rang L.R.
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 — 283 (P.C.) Ref 19 Pat
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 — 318 Ref (1910) 2 M.L.J.
 952 (P.C.)
 — 333=16 M.I.J. 63 (F.B.)
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 1 M.L.J. 647
 — 358 Ref (1940) 1 M.L.J.
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 — 534 =16 M.L.J. 435 Ref
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 — 539 D.st 21 Lah 14
 — 760 Ref 1940 A.L.J. 174
 30 Mad 6 Foll I.L.R. 1940 Nag
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 — 75 Dist (1940) 2 M.L.J.
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 — 83 (F.B.) D.st 21 Lah 84,
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 (1940) 2 M.L.J. 664
 — 197 Ref I.L.R. 1940 Kar
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 — 461 Ref I.L.R. 1940 All
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30 Mad 533 Ref (1910) 2 M.L.
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 — 537 Appl (1910) 2 M.L.J.
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 31 Mad 24 D.st (1910) 1 M.L.J.
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 — 71 Rel (1940) 1 M.L.J.
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 — 223 Rel I.L.R. (1940) 1
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 — 343 Rel 44 C.W.N. 811
 32 Mad 49 (F.B.) D.scnting judg
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 — 62 Rel I.L.R. 1940 Nag
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 — 429 Ref 1940 Rang L.R.
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 33 Mad 47 (F.B.) Rel I.L.R.
 1940 Nag 573 (F.B.)
 — 82 D.st (1940) 1 M.L.J.
 437
 — 100 Appr I.L.R. 1940 All
 79
 — 123 Foll 19 Pat 715
 — 211 Ref (1940) 2 M.L.J.
 484
 — 327 Foll (1940) 2 M.L.J.
 381
 34 Mad 167 Foll I.L.R. 1940
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 — 403 Appr I.L.R. (1940) 1
 Cal 33=44 C.W.N. 149
 35 Mad 1 (F.B.) Ref (1940) 2
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 — 44 D.sappr I.L.R. 1940
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 — 47 (F.B.) Foll (1940) 1
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 — 598 Ref (1940) 1 M.L.J.
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 — 607 (P.C.) Ref 1940 Rang
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 36 Mad 16 Rel I.L.R. 1940 Kar
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 — 148 Ref (1940) 2 M.L.J.
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 — 185 Rel I.L.R. 1940 Bom
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 — 295 (P.C.) Ref 19 Pat
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 — 315 Ref 1940 Rang L.R.
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 37 Mad 227 (P.C.) Foll I.L.R.
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 38 Mad 6 Foll 19 Pat 8, 2
 — 33 Ref I.L.R. 1940 Mad
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 — 36 Ref (1940) 2 M.L.J.
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 — 68 Ref 19 Pat 433
 — 86 Dist 19 Pat 433
 — 195 Ref 1940 A.L.J. 573
 — 297 (F.B.) Dist (1940) 2 M.
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 — 535 Dist I.L.R. 1940 Nag
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 — 350 Ref 1940 Rang L.R.
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 — 807 Ref I.L.R. 1940 All
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 — 823 (F.B.) Dist 19 Pat
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38 Mad 829 (F.B.) Rel I.L.R.
 1940 Kar 36, Foll (1940)
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 — 997 Rel I.L.R. 1940 Nag
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 — 1144 Rel (1940) 1 M.L.J.
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 39 Mad 54 Ref 1940 Rang L.R.
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 — 195 (F.B.) Rel (1940) 2
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 — 429 Rel I.L.R. 1940 Kar
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 — 634 638 Foll 21 Lah 171,
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 — 640 (P.C.) Foll 19 Pat 354
 — 700 Ref (1940) 2 M.L.J.
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 — 833 Foll 19 Pat 343
 — 936 D.st I.L.R. 1940 Kar
 225
 — 939 Ref 44 C.W.N. 579
 — 952 Ref (1940) 1 M.L.J.
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 — 1031 Ref 19 Pat 393
 40 Mad 93 Ref I.L.R. 1940
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 — 116 Ref 1940 A.L.J. 504
 — 281 Foll I.L.R. (1940) 1
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 — 402 Rel I.L.R. 1940 Nag
 526 (P.C.)
 — 793 Rel I.L.R. 1940 Nag
 538
 — 846 Foll 19 Pat 172
 — 1016 Ref 1940 Rang L.R.
 82
 — 1040 (F.B.) Rel (1940) 2
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 — 1111 Rel (1940) 1 N.L.J.
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 — 1171 Dist (1940) 2 M.L.J.
 384
 41 Mad 124 Ref (1940) 2 M.L.J.
 903=44 C.W.N. 957=21
 Lah 493 (P.C.)
 — 169 (F.B.) Ref (1940) 2
 M.L.J. 17
 — 183 Rel I.L.R. 1940 Kar
 36
 — 246 Ref (1940) 1 M.L.J.
 11 (F.B.)
 — 265 (F.B.) Dist (1910) 1
 M.L.J. 482 (F.B.)
 — 319 Ref 1940 Rang L.R.
 273
 — 510 Rel (1940) 2 M.L.J.
 376
 — 691 Ref 1940 Rang L.R.
 230
 — 701 Foll (1940) 1 M.L.J.
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 — 792 (F.B.) Appr 21 Lah
 400.
 — 904 (F.B.) Foll I.L.R.
 1940 Nag 324
 — 985 (F.B.) Dist (1940) 2
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 42 Mad 37 Appr 42 Bom L.R.
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 — 143 Ref (1940) 1 M.L.J.
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42 Mad 185 Rel I L R. 1940
Nag 55
—319 Ref (1940) 2 M L J 17
—455 D st (1940) 1 M L J
—437, (1940) 2 M L J 688
—523 (P C) Rel I L R
1940 Nag 20
—554 (F B) Foll (1940) 1
M L J 200
—590 Foll (1940) 1 M L J
248
—711 (F B) Ref I L R 1940
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43 Mad 94 (F B) Foll 1940
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—146 Ref 1940 Rang L R
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—635 Dist (1940) 2 M L J
239
—660 (P C) Dist 19 Pat 90
—760 (F B) Ref (1940) 1
M L J 872
—876 Foll (1940) 1 M L J
400 (F B)
44 Mad 253 Ref 15 Luck 175
—524 Foll I L R 1940 Nag
293
—544 Ref (1940) 2 M L J
513
—554 (F B) Rel (1940) 2
M L J 291
—677 Ref I L R 1940 Mad
1 (P C)
—828 Foll I L R 1940 Nag
324
—831 (P C) Ref 19 Pat
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L R 136
—946 Dist 19 Pat 507
—984 Ref I L R 1940 Kar
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—113 Ref 44 C W N 327
—246 Ref (1940) 2 M L J
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—527 Ref (1940) 1 M L J
782
—620 Ref I L R 1940 Mad
123
—648 Ref I L R (1940) 1
Cal 110
—716 (F B) Appl I L R
1940 Mad 1 (P C) Ref
(1940) 2 M L J 668
46 Mad 60 Ref 1940 Rang L R
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—162 Foll. 19 Pat 337
—190 Ref 1940 Rang L R
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—335 Ref 1940 Rang L R
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—592 Rel (1940) 2 M L J
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47 Mad 30 Dist (1940) 2 M L J
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—316 Dist I L R 1940 Nag
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—357 (F B) Foll 19 Pat 321
—398 Ref (1940) 1 M L J
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—483 (F B) Ref 42 Bom L
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47 Mad 641 Dist (1940) 1 M L J
595
—692 Foll I L R 1940
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—729 Ref I L R 1940 All
625 (P C)
—1436 Disc 1940 Rang L R
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48 Mad 454 Rel (1940) 2 M L J
13
—750 Foll (1940) 1 M L J
647
—944 Expl I L R 1940 Mad
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49 Mad 156 Appr I L R 1940
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—315 Rel (1940) 2 M L J
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—425 (F B) Ref I L R 1940
Kar 470 (F B)
—461 (F B) Cons 44 C W
N 665
—468 Not Appr 42 Bom L
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—523 Ref I L R 1940 All
386 (S B)
—609 Appr I L R 1940 All
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—652 Overruled (1940) 1
M L J 400 (F B)
—820 Ref 1940 Rang L R
93
—849 Ref I L R 1940 Kar
375
—969 Foll 42 Bom L R 283
50 Mad 159 (F B) Rel (1940) 2
M L J 215
—380 Dist I L R 1940 Nag
141 (F B)
—449 Foll 42 Bom L R 532
—541 Disc I L R 1940 Kar
513
—581 Ref (1940) 2 M L J
621
51 Mad 76 Foll (1940) 2 M L J
584
—96 Ref I L R 1940 All
136
—361 Ref I L R 1940 Nag
293
—455 (S B) Ref (1940) 2
M L J 760
—549 Foll I L R 1940 Nag
334
—701 Foll I L R 1940 Bom
689
—956 (F B) Ref I L R 1940
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—967 Disappr I L R 1940
All 396 (F B)
52 Mad 6 Ref (1940) 1 M L J
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—66 Not Foll I L R 1940
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—160 Ref (1940) 1 M L J
800
—207 Ref (1940) 2 M L J
688
—246 Rel I L R 1940 Kar
375
—465 Ref 42 Bom L R 165
—648 Not Foll I L R 1940
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52 Mad 717 (F B) Rel I L R
1940 Nag 486
—829 Ref I L R 1940 Nag
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—899 Ref 1940 Rang L R
512
53 Mad 84 (F B) Foll (1940) 2
M L J 358
—151 Ref I L R 1940 Mad
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—155 Disc. 1940 Rang L R 72.
—243 Dist (1940) 2 M L J
17, Dist 21 Lah 345
—475 Foll I L R 1940 Nag
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—585 Expl (1940) 2 M L J
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—796 Appr (1940) 2 M L J
952 (P C)
—826 Foll (1940) 1 M L J.
424
—861 Appr 1940 A L J 607
—937 Ref I L R 1940 Nag
488
54 Mad 27 Ref (1940) 2 M L J.
30
—68 Foll 19 Pat 369
—527 Foll 21 Lah 199
—770 Foll 21 Lah 199
—989 Foll I L R 1940 Bom
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—1018 Ref I L R 1940 Kar.
414
55 Mad 251 Foll I L R 1940
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—332 Ref I L R 1940 Nag
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—243 Ref I L R 1940 Kar
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—346 Ref 1940 Rang L R 163.
—507 Diss 19 Pat 578
—622 (F B) Ref I L R 1940
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—630 (F B) Cons (1940) 2
M L J 251
—646 Ref I L R 1940 Mad
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—715 Foll I L R 1940 All
395
—758 Ref (1940) 1 M L J
766 (F B)
—830 (S B) Appl (1940) 2
M L J 825
—903 Ref I L R 1940 All
396 (F B)
56 Mad 1 (S B) Rel (1940) 2
M L J 834 (S B)
—169 Ref I L R 1940 Bom
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—366 Overruled (1940) 1
M L J 79
—433 Rel I L R 1940 Nag
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—490 (F B) Rel (1940) 1
M L J 537
—534 Disc I L R 1940 Nag
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—657 (P C) Rel 19 Pat 208
—915 Foll I L R 1940 Bom
426
57 Mad 218 Dist 19 Pat 688
—271 (F B) Ref (1940) 2
M L J 388 No longer

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 57 Mad 315 Ref (1940) 2 M.L.J. 858
 — 362 Ref (1940) 2 M.L.J. 858
 — 411 Foll (1940) 1 M.L.J. 400 (F.B.)
 — 437 Expl 1940 Rang L.R. 72
 — 696 Rel I.L.R. 1940 Kar 461
 — 767 Ref (1940) 2 M.L.J. 17
 58 Mad 389 Ref I.L.R. 1940 Mad 123
 — 403 Ref (1940) 2 M.L.J. 860
 — 469 Cons (1940) 2 M.L.J. 782
 — 489 Diss 44 C.W.N. 555
 — 508 (F.B.) Ref (1940) 1 M.L.J. 932
 — 727 (F.B.) Foll (1940) 2 M.L.J. 694
 — 760 Appl (1940) 1 M.L.J. 268
 — 893 (F.B.) Rel (1940) 1 M.L.J. 537
 — 908 (F.B.) Not Foll I.L.R. 1940 Nag 204
 — 972 (F.B.) Rel I.L.R. 1940 Kar 360
 59 Mad 75 Ref (1940) 2 M.L.J. 990 (F.B.)
 — 93 (F.B.) Diss 1940 Rang L.R. 492
 — 107 Dist I.L.R. 1940 Mad 87 = (1940) 1 M.L.J. 152
 — 121 Ref (1940) 2 M.L.J. 484
 — 165 Rel (1940) 2 M.L.J. 491
 — 171 (F.B.) Rel (1940) 1 M.L.J. 543
 — 188 (F.B.) Ref (1940) 2 M.L.J. 305
 — 303 Rel 15 Luck 332
 — 354 (F.B.) Ref I.L.R. 1940 Mad 123
 — 539 (P.C.) Ref I.L.R. 1940 Nag 74, Rel 19 Pat 578
 — 622 Dist (1940) 2 M.L.J. 39
 — 667 Disc I.L.R. 1940 Bom 109
 — 693 Rel (1940) 2 M.L.J. 791
 — 805 Diss (1940) 2 M.L.J. 570
 — 809 (P.C.) Dist 19 Pat 507
 — 853 Cons I.L.R. (1940) 1 Cal 476
 — 872 Ref 21 Lah 124
 — 895 Dist (1940) 2 M.L.J. 241
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 — 495 Overruled (1940) 1 M.L.J. 268

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 — 571 Ref 44 C.W.N. 218
 — 607 Ref 1940 Rang L.R. 512
 — 616 (F.B.) Disappr I.L.R. 1940 Mad 60
 — 777 (F.B.) Foll 21 Lah 23 (F.B.)
 — 841 Ref (1940) 2 M.L.J. 606
 — 990 Not Foll I.L.R. 1940 Nag 509, Ref I.L.R. (1940) 1 Cal 64 = 44 C.W.N. 218
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 — 220 Rel I.L.R. 1940 Kar 334
 — 326 Foll I.L.R. 1940 Mad 60
 — 744 (F.B.) Rel (1940) 1 M.L.J. 429, (1940) 2 M.L.J. 979
 — 867 Ref I.L.R. (1940) 1 Cal 64
 — 909 Ref I.L.R. (1940) 1 Cal 64
 — 968 Ref (1940) 2 M.L.J. 326
 — 1007 (F.B.) Foll 19 Pat 123 (F.B.)
 — 1040 Reversed 67 I.A. 222
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 — 252 Dist (1940) 2 M.L.J. 371
 — 290 Foll (1940) 2 M.L.J. 831
 — 328 Ref (1940) 2 M.L.J. 406
 — 404 Rel I.L.R. 1940 Kar 309
 — 439 Overruled (1940) 1 M.L.J. 719 (F.B.)
 — 520 Foll (1940) 2 M.L.J. 513
 — 525 Dist (1940) 2 M.L.J. 273, Ref (1940) 1 M.L.J. 860
 — 877 (F.B.) = (1939) 2 M.L.J. 340 Expl (1940) 1 M.L.J. 204
 — 891 Ref I.L.R. 1940 Mad 27
 — 928 Rel I.L.R. 1940 Kar 347
 — 947 Diss 21 Lah 242 (F.B.), I.L.R. 1940 All 396 (F.B.)
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 — 259 (F.B.) Ref (1940) 2 M.L.J. 655
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 9 M.L.J. 355 Rel I.L.R. 1940 Mad 40
 13 M.L.J. 7 Foll I.L.R. 1940 All 371
 21 M.L.J. 21 (F.B.) majority decision overruled (1940) 1 M.L.J. 32 (F.B.)
 — 481 Ref (1940) 2 M.L.J. 587
 22 M.L.J. 265 Ref (1940) 2 M.L.J. 30
 24 M.L.J. 66 Ref (1940) 1 M.L.J. 766 (F.B.)
 — 205 Ref (1940) 1 M.L.J. 629 (F.B.)
 — 693 Rel (1940) 1 M.L.J. 173
 25 M.L.J. 248 Diss 19 Pat 870 (F.B.)
 26 M.L.J. 210 Ref (1940) 1 M.L.J. 152
 — 233 Ref 44 C.W.N. 368
 — 509 Foll (1940) 2 M.L.J. 726
 27 M.L.J. 480 Ref I.L.R. 1940 Mad 299 (F.B.)
 28 M.L.J. 488 Cons (1940) 2 M.L.J. 311
 29 M.L.J. 474 Appl (1940) 1 M.L.J. 220
 — 760 Disappr I.L.R. 1940 All 225
 31 M.L.J. 93 Rel I.L.R. 1940 Kar 461
 — 440 (F.B.) Foll (1940) 1 M.L.J. 719 (F.B.)
 35 M.L.J. 23 Foll. 42 Bom. L.R. 532
 — 304 Ref (1940) 2 M.L.J. 827
 37 M.L.J. 162 Ref (1940) 2 M.L.J. 780
 — 698 Foll (1940) 2 M.L.J. 613
 38 M.L.J. 55 Dist. 44 C.W.N. 1056
 — 222 Rel (1940) 1 M.L.J. 155
 43 M.L.J. 153 Ref (1940) 1 M.L.J. 302
 — 271 Appl (1940) 2 M.L.J. 494
 44 M.L.J. 486 Appr (1940) 2 M.L.J. 924 (F.B.)
 45 M.L.J. 44 Dist 44 C.W.N. 1056
 — 770 (P.C.) Ref (1940) 1 M.L.J. 482 (F.B.)
 — 798 Dist. (1940) 2 M.L.J. 241
 46 M.L.J. 380 Appl. (1940) 1 M.L.J. 664
 — 580 Ref I.L.R. 1940 Kar. 513
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- 47 M L J 441 (P C) Rel (1940)
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- 48 M L J 152 Ref 1940 Rang
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- 49 M L J 101 D st 44 C W N
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401 Foll (1940) 2 M L J
487
562 Ref (1940) 1 M L J
789
- 50 M L J 75 Ref (1940) 2 M L J
940
114 Rel (1940) 1 M L J
813
183 Dist. (1940) 2 M L J
190
- 51 M L J 90 Rel (1940) 2 M L J
427
252 Foll (1940) 2 M L J
427
295 Foll (1940) 2 M L J
645
360 (F B) Foll (1940) 1
M L J 319 (F B)
845 Disappr I L R 1940
Mad 125
- 52 M L J 121 Ref (1940) 2 M L
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- 53 M L J 104 Expl (1940) 2
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881 Rel (1940) 2 M L J
160
- 54 M L J 230 Disappr I L R
1940 Mad 87
409 Foll (1940) 1 M L J
590
665 Diss (1940) 1 M L J
54 (F B)
- 55 M L J 262 Ref (1940) 2
M L J 700
- 56 M L J 269 Ref 42 Bom L R.
491
293 Foll. (1940) 2 M L J
688
394 Ref (1940) 2 M L
J 176
489 Ref 44 C W N 149
630 Ref (1940) 2 M L J
326
- 57 M L J 800 Rel (1940) 1 M L
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- 59 M L J 430 Ref 44 C W N
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- 60 M L J 698 Rel (1940) 2 M L
J 867
- 61 M L J 32 Disappr I L R. 1940
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94 (P C) Dist. (1940) 2
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350 Ref 42 Bom L R.
77 Dist. (1940) 1
2
(1940) 2 M L J
- 63 M L J 684 Foll I L R 1940
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- 64 M L J 361 Overruled (1910)
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466 (P C) D st (1940) 2
M L J 39
- 65 M L J 317 Ref (1940) 1 M L
J 121
455 Foll (1940) 1 M L J
676
719 (F B) Foll (1940) 1
M L J 711
826 Foll (1940) 1 M L J
601
- 67 M L J 389 Ref (1940) 1 M L
J 800
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782
583 Ref (1940) 1 M L J
813
- 68 M L J 73 Disappr 42 Bom
L R 640=21 Lah 470=
44 C W N 625=(1940) 1
M L J 895 (P C)
- 69 M L J 210 Rel (1940) 1 M L
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388 (P C) Ref (1940) 1
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911
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694
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- 70 M L J 306 Rel I L R 1940
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- 71 M L J 388 Diss (1940) 1 M L
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123
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276
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M L J 700
180 Overruled (1940) 1
M L J 553
399 Ref (1940) 1 M L J
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516 Affirmed (1940) 1
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1032 Rel (1940) 2 M L J
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770 Diss (1940) 1 M L J
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(1939) 2 M L J 120 Ref (1940)
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225 Overruled (1940) 2
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380 Ref (1940) 1 M L J
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609 Foll (1940) 2 M L J
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M L J 422
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727 Foll (1940) 2 M L J
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291
753 Overruled (1940) 1
M L J 228
853 Not Foll (1940) 1
M L J 422
(1940) 1 M L J 137 (P C) Appl
(1940) 1 M L J 639 (F B)
225 Ref (1940) 2 M L J
235, 293 Not Foll
(1940) 2 M L J 648
400 (F B) Ref (1940) 1
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534 Ref (1940) 2 M L J
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543 Rel (1940) 2 M L J
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600 Overruled (1940) 2
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293 Foll (1940) 2 M L J.
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317 Overruled (1940) 2
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451 Ref (1940) 2 M L J
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(1940) 2 M.L.J. 516 Appr (1940)
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 —517 Foll (1940) 2 M.L.J.
 651, Ref (1940) 2 M.L.J.
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 —547 Rel (1940) 2 M.L.J.
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 —651 Rel (1940) 2 M.L.J.
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 —664 Rel (1940) 2 M.L.J.
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 —726 Ref (1940) 2 M.L.J.
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 —837 Dist (1940) 2 M.L.J.
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 —838 Ref (1940) 2 M.L.J.
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 —841 Appr (1940) 2 M.L.J.
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2 L.W. 635 Cons (1940) 2 M.L.J.
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 —823 Ref (1940) 2 M.L.J.
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 3 L.W. 30 Rel (1940) 1 M.L.J.
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 —405 Overruled (1940) 2
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 7 L.W. 8 Ref (1940) 2 M.L.J.
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 10 L.W. 57 Cons (1940) 2 M.L.J.
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 13 L.W. 153 Ref (1940) 2 M.L.J.
 5
 20 L.W. 503 (Ramesam J's view)
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 400 (F.B.), (View of Jackson,
 J.) Foll (1940) 1 M.L.J. 400
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 21 L.W. 398 Overruled (1940) 2
 M.L.J. 190
 —606 Appr (1940) 2 M.L.J.
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 23 L.W. 149 Rel (1940) 1 M.L.J.
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 24 L.W. 35 Dist (1940) 1 M.L.J.
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 —252 Rel (1940) 1 M.L.J.
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 25 L.W. 127 Overruled (1940) 2
 M.L.J. 190
 34 L.W. 598 Not Foll (1940) 1
 M.L.J. 820
 35 L.W. 206 Diss (1940) 2 M.L.J.
 645
 40 L.W. 535 Ref (1940) 1 M.L.J.
 20
 —596 Overruled (1940) 1
 M.L.J. 79 (F.B.)
 —545 Foll (1940) 1 M.L.J.
 200
 44 L.W. 854 Ref (1940) 1 M.L.J.
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 47 L.W. 606 (F.B.) Foll (1940)
 1 M.L.J. 860
 49 L.W. 238 Appr (1940) 1 M.L.J.
 732 (F.B.)

49 L.W. 387 Dist (1940) 2 M.L.J.
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 50 L.W. 677 Ref (1940) 2 M.L.J.
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 —681 Ref (1940) 2 M.L.J.
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 1918 M.W.N. 289 Ref (1940) 2
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 (1940) 1 M.L.J. 939
 1931 M.W.N. 239 Diss (1940) 2
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 —956 Ref (1940) 1 M.L.J.
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 1932 M.W.N. 18 Dist (1940) 2
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 1933 M.W.N. 1281 Ref (1940)
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 1935 M.W.N. 937 Ref (1940) 1
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 1936 M.W.N. 547 (1) Disappr
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 —547 (2) Disappr I.L.R.
 1940 Mad 60
 —1088 Not Foll (1940) 2
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 1937 M.W.N. 48 Ref (1940) 1
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 —1072 Ref (1940) 1 M.L.J.
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 1939 M.W.N. 426 Appr I.L.R.
 1940 Mad 60
 —1154 Ref 44 C.W.N. 701

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1 M.H.C.R. 301 Ref 42 Bom L.
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 2 M.H.C.R. 196 Ref I.L.R. 1940
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 3 M.H.C.R. 251 Ref (1940) 2
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 —312 Ref (1940) 1 M.L.J.
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 4 M.H.C.R. 165 Diss 42 Bom L.
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 5 M.H.C.R. 128 Cons (1940) 2
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2 Weir 49 Ref (1940) 1 M.L.J. 11
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 —487 Ref 1940 Rang L.R.
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 —629 Foll 1940 Rang L.R.
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 —753 Disappr (1940) 1
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1 Luck 215 (P.C.) Foll I.L.R.
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 —483 Rel 15 Luck 418
 2 Luck 109 Rel 15 Luck 30
 —740 Foll 15 Luck 15 Rel
 15 Luck 385
 3 Luck 680 Disappr I.L.R. 1940
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 4 Luck 168 Rel I.L.R. (1940) 1
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 —201 Foll I.L.R. 1940 Nag
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 —517 Dist 15 Luck 36
 5 Luck 742 Foll I.L.R. 1940
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 6 Luck 234 Not Foll I.L.R. 1940
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 —239 Doubt 1940 Rang
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 —365 Ref 15 Luck 112
 —668 Foll 15 Luck 429
 7 Luck 1 (P.C.) Dist I.L.R. 1940
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 —324 (P.C.) Ref I.L.R. 1940
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 —573 Ref 1940 Rang L.R.
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 —716 (F.B.) Ref I.L.R. 1940
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 8 Luck 111 Rel 15 Luck 342
 9 Luck 267 Ref 15 Luck 537
 —484 Ref 15 Luck 112
 10 Luck 70 Rel 15 Luck 399
 —265 Ref 15 Luck 365
 11 Luck 148 Foll 19 Pat 382
 —575 Ref 15 Luck 537
 —611 Foll I.L.R. (1940) 1
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 12 Luck 19 Not Foll 15 Luck
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 —30 Foll I.L.R. 1940 Nag.
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 —52 Not Foll 15 Luck 332
 —77 Ref I.L.R. 1940 All
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 —586 Rel 15 Luck 456
 —743 Appr I.L.R. 1940 All
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 13 Luck 61=(1938) 1 M.L.J. 41
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 —65 Ref 15 Luck 101
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 —171 Rel 15 Luck 308
 —178 Rel 15 Luck 418 &
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 —266 Overruled 15 Luck
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13 Luck 380 Ref 15 Luck 229
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---442 Ref 15 Luck 61
---508 Ref 15 Luck 112
---761 (FB) Foll 19 Pat
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14 Luck 49 Ref 15 Luck 456
---71 Ref 15 Luck 460
---116 Ref 15 Luck 365
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---227 (FB) Foll 15 Luck
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---171 Ref 15 Luck 392
---320 Ref 15 Luck 487
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---374 Ref 15 Luck 418
---339 R-f 15 Luck 418
---395 D st 15 Luck 487
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---921 Ref 15 Luck 121
---1150 D st 15 Luck 288
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---353 R f 15 Luck 265
---373 R-f 15 Luck 290
---420 R-f 15 Luck 524
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---722 Ref 15 Luck 233
10 O W N 355 R-f 15 Luck 487
---424 D st 15 Luck 229 (F
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---1093 D st 15 Luck 126
11 O W N 473 R-f 15 Luck 344
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---1297 Ref 15 Luck 487

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---1158 Foll 15 Luck 163
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---258 Ref & Rel 15 Luck
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---1036 D st & D ss 15 Luck
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---1141 Ref 15 Luck 150
---1167 Ref 15 Luck 324
---1169 Ref 15 Luck 503
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---246 Ref 15 Luck 448

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2 Pat 941 Ref I L R 1940 Kar
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---264 Ref & Foll 19 Pat
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---724 Foll I L R 1940 Nag
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---890 Ref I L R 1940 All
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3 Pat 1 (FB) Ref 44 C W N 118
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---625 (PC) Ref 19 Pat 111
---781 Foll 19 Pat 369
---872 Foll 19 Pat 301
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---448 D st 42 Bom L R 491
---704 Overruled 19 Pat 159
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5 Pat 216 Ref I L R 1940 Kar
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---281 Doubted & D st 19
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---755 Foll 19 Pat 870 (F
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6 Pat 259 Foll I L R 1940 All
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---380 Foll I L R 1940 Nag
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---428 D st 19 Pat 852
---458 Ref 44 C W N 912
7 Pat 129 Foll 19 Pat 618 (FB)
---221 D st I L R (1940) 1
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---319 Foll (1940) 2 M L J
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---758 D st 44 C W N 651
---790 Ref 19 Pat 393 21
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8 Pat 323 Ref 1940 Rang L R
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---537 Ref I L R 1940 Kar
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8 Pat 736 Foll I L R 1940 Bom
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9 Pat 347 (FB) Ref 19 Pat 393
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---569 Cons 1940 Rang L R
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10 Pat 140 Ref 19 Pat 369
---213 D st 44 C W N 322
---234 D st I L R 1940 Kar
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---471 Ref I L R 1940 Nag
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---481 (PC) Foll I L R
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---288 Appr I L R (1940) 1
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---399 Ref I L R 1940 Kar
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---409 D st I L R 1940 Nag
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---445 Foll 19 Pat 838
---493 Ref I L R 1940 Kar
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---504 D t I L R 1940 Nag
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---580 Foll 19 Pat 838
---613 Foll 19 Pat 669
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---117 Ref I L R 1940 Bom
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---163 D st I L R 1940 Nag
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---216 Cons 19 Pat 186
---318 (PC) Ref I L R
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13 Pat 111 Overruled 19 Pat
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---231 (FB) Ref 19 Pat 269
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---411 Cons I L R (1940) 1
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---446 Ref (1940) 1 M L J
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---467 Ref 19 Pat 393
---620 D st 19 Pat 90
---655 Foll 19 Pat 404
14 Pat 392 Foll I L R 1940 Nag
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---611 (PC) D st 19 Pat
669
---672 (FB) Ref 19 Lah
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- 15 Pat. 26 Ref. I.L.R. 1910 Kar. 286.
 — 44 Ref. 1940 Rang. L.R. 527.
 — 268 (P.C.) Ref. I.L.R. 1940 Nag. 468.
 — 284 Ref. 15 Luck. 376.
 — 786 Ref. I.L.R. 1940 Bom 50, Foll. 19 Pat. 753 (F.B.).
 16 Pat. 27 Ref. 21 Lah. 470= (1940) 1 M.L.J. 895 (P.C.).
 — 60 (F.B.) Dist. 19 Pat. 618 (F.B.).
 — 190 Foll. 19 Pat. 208.
 — 84 Dist. I.L.R. 1940 Kar. 195.
 — 294 Criticised (1940) 1 M.L.J. 895=21 Lah. 470 (P.C.).
 — 766 Ref. I.L.R. 1940 Kar. 1.
 17 Pat. 143 Ref. 19 Pat. 275.
 — 218 Ref. 19 Pat. 398.
 — 308 Foll. I.L.R. 1940 All. 371.
 — 460 Not Foll. 19 Pat. 753 (F.B.).
 — 694 (F.B.) Dist. 19 Pat. 524; Ref. 19 Pat. 824.
 18 Pat. 1 Foll. 19 Pat. 753 (F.B.)
 — 13 Disapp. 1940 A.L.J. 274=I.L.R. 1940 All. 455 (F.B.).
 — 114 Ref. I.L.R. 1940 Nag. 170.
 — 234 Ref. I.L.R. 1940 All. 396 (F.B.).
 — 327 (F.B.) Ref. (1940) 1 M.L.J. 350; 19 Pat. 531.
 — 355 Foll. 19 Pat. 753 (F.B.).
 — 395 Ref. (1940) 1 M.L.J. 235.
 — 450 Diss. 1940 A.L.J. 241 (F.B.).
 19 Pat. 154 Foll. 19 Pat. 852.
 — 172 Overruled 19 Pat. 870. (F.B.).
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 I.L.R. 1939 Pat. 234 (P.C.) Ref. 21 Lah. 242; Ref. I.L.R. 1940 Nag. 232.
 — 450 Diss. 21 Lah. 242.

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- 1 P.L.J. 73 Ref. 15 Luck. 487.
 2 P.L.J. 204 Overruled 19 Pat. 321.
 — 630 Expl. 19 Pat. 715.
 — 705 Ref. I.L.R. 1940 Bom. 339.
 4 P.L.J. 240 (F.B.) Expl. I.L.R. 1940 Bom 609=42 Bom. L.R. 663.
 5 P.L.J. 79 Ref. 19 Pat. 553 (F.B.).
 — 270 Foll. 19 Pat. 862.
 — 415 Dist. 15 Luck. 332.

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- P.L.T. 163 Doubted & Dist. 19 Pat. 893 (F.B.).

- 3 P.L.T. 13 Doubted & Dist. 19 Pat. 893 (F.B.).
 — 22 Doubted & Dist. 19 Pat. 893 (F.B.).
 — 422 Foll. 19 Pat. 354.
 4 P.L.T. 640 Ref. 19 Pat. 824.
 5 P.L.T. 170 Ref. 19 Pat. 491.
 7 P.L.T. 87 Ref. 19 Pat. 893 (F.B.).
 — 567 Not Foll. 19 Pat. 369.
 8 P.L.T. 708 Dist. 19 Pat. 343.
 — 779 Foll. 19 Pat. 123 (F.B.).
 9 P.L.T. 259 Dist. 19 Pat. 275.
 — 305 Overruled 19 Pat. 123 (F.B.).
 10 P.L.T. 609 Ref. 44 C.W.N. 928.
 11 P.L.T. 255 Not Foll. 19 Pat. 404.
 — 656 Ref. 19 Pat. 404.
 12 P.L.T. 231 Ref. 19 Pat. 404.
 — 233 Dist. 19 Pat. 404.
 13 P.L.T. 506 Ref. 19 Pat. 404.
 14 P.L.T. 204 Dist. 19 Pat. 507.
 — 494 Foll. 19 Pat. 369.
 — 628 Foll. 19 Pat. 90.
 15 P.L.T. 763 (P.C.) Ref. 19 Pat. 159 (F.B.).
 16 P.L.T. 73 Ref. 19 Pat. 824.
 — 95 Not Foll. 19 Pat. 369.
 — 308 Dist. 19 Pat. 172.
 — 730 Foll. 19 Pat. 369.
 19 P.L.T. 328 Dist. 19 Pat. 618.
 — 489 Dist. 19 Pat. 507.
 — 570 Ref. 19 Pat. 275.
 20 P.L.T. 120 Foll. 19 Pat. 343.
 — 346 Foll. 19 Pat. 111.
 — 356 Foll. 19 Pat. 354.
 — 414 Foll. 19 Pat. 208.
 21 P.L.T. 255 Ref. 19 Pat. 862.

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- 1 Rang. 526 Ref. 1940 A.L.J. 357 =I.L.R. 1940 All. 531.
 — 756 Ref. 1940 Rang. L.R. 226.
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 — 106 Ref. I.L.R. 1940 Kar. 302.
 — 374 Ref. I.L.R. 1940 Kar. 435.
 — 382 Dist. I.L.R. (1940) 1 Cal. 544.
 — 391 Not Foll. (1940) 2 M.L.J. 257 (F.B.).
 — 486 Foll. 19 Pat. 172; Dist 19 Pat. 870 (F.B.).
 — 495 Ref. 1940 Rang. L.R. 136.
 — 693 Ref. 1940 Rang. L.R. 28.
 3 Rang. 303 Ref. I.L.R. 1940 Kar. 414.
 — 443 Diss. (1940) 1 M.L.J. 655.
 4 Rang. 18 Dist. 1940 Rang. L.R. 512.
 — 22 Ref. 1940 Rang. L.R. 54; Appl. 1940 Rang. L.R. 59 (F.B.).
 — 66 Ref. I.L.R. 1940 Nag. 496.

- 4 Rang. 184 Ref. 1940 Rang. L.R. 32.
 — 214 Ref. I.L.R. 1940 Kar. 302.
 — 247 Ref. 19 Pat. 862.
 5 Rang. 53 (P.C.) Ref. I.L.R. 1940 Nag. 183; Ref. I.L.R. 1940 Nag. 483.
 — 145 Dist. J.L.R. 1940 Nag. 37.
 — 397 Ref. I.L.R. 1940 Kar. 46.
 — 451 (P.C.) Ref. I.L.R. (1940) 1 Cal. 323.
 — 458 Ref. 1940 Rang. L.R. 230.
 — 520 Ref. 44 C.W.N. 811.
 — 699 Ref. 1940 Rang. L.R. 59 (F.B.).
 — 722 Ref. 44 C.W.N. 194.
 — 751 Not Foll. I.L.R. 1940 Nag. 306.
 — 768 Ref. 1940 Rang. L.R. 263.
 6 Rang. 408 Dist. I.L.R. 1940 Nag. 519.
 — 474 Ref. 15 Luck. 290.
 — 494 Ref. 1940 Rang. L.R. 512.
 — 578 Ref. I.L.R. 1940 Kar. 414.
 — 582 Ref. 15 Luck. 332.
 — 672 Foll. I.L.R. 1940 Nag. 280.
 7 Rang. 201 Ref. I.L.R. 1940 Kar. 513.
 — 281 Ref. I.L.R. 1940 Kar. 309.
 — 316 Ref. 1940 Rang. 219.
 — 477 Overruled 1940 Rang. L.R. 59 (F.B.).
 — 569 Ref. 1940 Rang. L.R. 28.
 — 624 (P.C.) Foll. I.L.R. 1940 Nag. 74.
 8 Rang. 538 Foll. I.L.R. 1940 Nag. 324.
 9 Rang. 161 Ref. 1940 Rang. L.R. 426.
 — 186 Ref. I.L.R. 1940 Nag. 45.
 — 231 (F.B.) Ref. (1940) 1 M.L.J. 574.
 — 281 Ref. 1940 Rang. L.R. 325.
 — 367 Ref. 1940 Rang. L.R. 59 (F.B.).
 — 401 Ref. (1940) 2 M.L.J. 655.
 — 480 (F.B.) Ref. (1940) 1 M.L.J. 329; Not Foll. I.L.R. 1940 Nag. 225.
 — 524 Ref. 1940 Rang. L.R. 180.
 — 614 Foll. I.L.R. 1940 Nag. 316; Ref. 1940 Rang. L.R. 59 (F.B.).
 — 624 (P.C.) Ref. 19 Pat. 578.
 10 Rang. 189 Dist. I.L.R. 1940 Nag. 141 (F.B.).
 — 357 (F.B.) Foll. I.L.R. 1940 Nag. 549.

- 10 Rang 511 (FB) Rel I L R
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11 Rang 158 Ref 1940 Rang L
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— 287 (FB) Foll I L R
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— 361 Cons 1940 Rang L R
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— 372 (FB) Foll 19 Pat
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— 446 Foll I L R 1940 Bom
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— 454 Ref I L R 1940 Kar
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— 437 Rel I L R (1940) 1
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— 666 Ref (1940) 1 M L J
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— 716 Cons 1940 Rang L R
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- 1 L B R 198 Ref 1940 Rang L R
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— 233 Cons 1940 Rang L R
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— 262 Ref 1940 Rang L R
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— 125 Disc 1940 Rang L R
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— 232 Ref 1940 Rang L R
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4 L B R 252 Overruled 1940
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5 L B R 129 Appr 1940 Rang
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6 L B R 77 Ref 1940 Rang L R
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- 7 L B R 27 Ref 1940 Rang L R.
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— 58 Ref 1940 Rang L R
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- 4 Bur L R 83 Ref 1940 Rang L.
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5 Bur L T 73 Ref 1940 Rang L.
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- 1 N L R 128 Ref I L R 1940
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— 167 Foll I L R 1940 Nag
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— 130 (P C) Ref I L R 1940
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3 N L R 40 Ref I L R 1940 Nag
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5 N L R 103 Ref I L R 1940
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— 181 Disc I L R 1940 Nag
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6 N L R 72 Doubted I L R 1940
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7 N L R 49 Diss I L R 1940
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— 53 Rel I L R 1940 Nag
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8 N L R 22 Ref I L R 1940 Nag
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— 51 Foll I L R. 1940 Nag
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9 N L R 182 Dist I L R 1940
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10 N L R 146 Ref I L R 1940
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12 N L R 126 Overruled I L R
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— 150 Foll I L R 1940 Nag
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— 42 Foll I L R 1940 Nag
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20 N L R 145 Foll I L R 1940
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21 N L R 117 (P C) Foll I L R
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— 185 Foll I L R 1940 Nag
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22 N L R 86 Ref I L R 1940
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— 103 Ref I L R 1940 Nag
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23 N L R 174 Rel I L R 1940
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24 N L R 25 (P C) Ref I L R
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25 N L R 55 Ref I L R 1940
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- 25 N L R 107 Dist I L R. 1940
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— 198 Overruled I L R 1940
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— 312 Not Foll I L R 1940
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27 N L R 95 (P C) Dist I L R.
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— 251 Foll I L R 1940 Nag
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— 382 Foll I L R 1940 Nag
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28 N L R 25 Foll I L R 1940
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— 163 Rel I L R 1940 Nag
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29 N L R 24 Foll I L R 1940
Nag 48
— 210 (P C) Dist I L R.
1940 Nag 244
— 350 Foll I L R 1940 Nag.
110
30 N L R 121 (P C) Foll I L R.
1940 Nag 446
— 175 Ref I L R 1940 Nag.
269
31 N L R 62 Rel I L R 1940
Nag 255
— Supp 72 Overruled I L R.
1940 Nag 538
— Supp 124 Overruled I L R
1940 Nag 573 (F B)
I L R. 1936 Nag 104 Dist I L R.
1940 Nag 74, Ref I L R.
1940 Nag 348 (F B)
— 142 Dist I L R 1940 Nag.
526
I L R. 1937 Nag 84 Ref I L R.
1940 Nag 170
— 178 Foll I L R 1940 Nag
280
— 291 Ref (1940) 1 M L J.
482 (F B), Foll I L R.
1940 Nag 316
— 406 Ref I L R 1940 Nag
269
— 408 Foll I L R 1940 Nag
522
I L R. 1938 Nag 10 Ref I L R.
1940 Nag 293
— 91 Ref I L R 1940 Nag.
468
— 136 Ref I L R 1940 Nag
293
— 442 Ref I L R 1940 Nag
394
I L R. 1939 Nag 398 Foll I L R
1940 Nag 261

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- 6 N L J 6 Ref I L R 1940 Nag.
190
13 N L J 102 Disappr I L R.
1940 Nag 441
19 N L J 123 Ref I L R 1940
Nag 348 (F B)
— 296 Dist I L R 1940 Nag
306
20 N L J 115 Dist I L R 1940
Nag 488

1938 N L J 123 Rel I L R 1910
Nag 177
— 379 Ref I L R 1910 Nag
348 (F B)
1939 N L J 216 Rel I L R 1910
Nag 177
1940 N L J 174 Apr I L R
1940 Nag 615

C P LAW REPORTS

10 C P L R 11 (Cr) Ref I L R
1940 Nag 257
14 C P L R 17 Ref I L R 1940
Nag 52
16 C P L R 135 Ref I L R 1940
Nag 348 (F B)
1 C P L R 5 Ref I L R 1940
Nag 110
— 29 Ref I L R 1910 Nag
10

SIND LAW REPORTS

3 S L R 118 D I L R 1940
Kar 208
4 S L R 77 Foll I L R 1910 Kar
208
6 S L R 226 Rel I L R 1940
Kar 34
7 S L R 40 Rel I L R 1940 Kar
110
— 109 Ref I L R 1940 Kar
249
8 S L R 63 Not Foll I L R 1940
Kar 38
9 S L R 18 Rel I L R 1940
Kar 467
11 S L R 53 Ref I L R 1940
Kar 470 (F B)
12 S L R 61 Rel 21 Lah 345
— 6 Ref I L R 1940 Kar
40 (F B)

13 S L R 166 Ref I L R 1940
Kar 470 (F B)
14 S L R 128 Not Foll I L R
1940 Kar 385
— 168 Ref I L R 1940 Kar
470 (F B)
15 S L R 165 D I L R 1940
Kar 22
1 S L R 150 (F B) Foll I L R
1940 Kar 287 Ref I L
R 1940 Kar 414 435
18 S L R 83 Ref I L R 1940
Kar 275

19 S L R 3 6 D st I L R 1940
Kar 208
0 S L R 150 Foll I L R 1940
Kar 135
1 S L R 93 Rel I L R 1940
Kar 494
— 280 Ref I L R 1940 Kar
375
— 356 Ref I L R 1940 Kar
249

2 S L R 8 Rel I L R 1940
Kar 360
3 S L R 43 O verruled I L R
1940 Kar 74 (F B)
— 225 Foll I L R 1940 Kar
414
— 285 Foll I L R 1940 Kar
414

26 S L R 299 O verruled I L R
1940 Kar 470 (F B)
27 S L R 34 Ref I L R 1910
Kar 88
29 S L R 365 Ref I L R 1940
Kar 275
— 177 Rel I L R 1940 Kar
467
30 S L R 371 Rel I L R 1940
Kar 174
31 S L R 165 Rel I L R 1940
Kar 22
32 S L R 213 D st I L R 1940
Kar 8
— 281 D sc I L R 1940 Kar
513
— 432 Ref I L R 1940 Kar
130
— 467 Rel I L R 1940 Kar
41
— 672 D c I L R 1940 Kar
113
— 03 D st I L R 1940 Kar
2

I L R KARACHI

I L R 1939 Kar 85 (F B) Rel
I L R 1940 Kar 431
— 123 (P C) Ref I L R
1940 Kar 162
— 132 (F C) Ref I L R 1940
Kar 74 (F B)
— 140 Rel I L R 1940 Kar
334
— 277 Rel I L R 1940 Kar
431
— 65 Affirmed I L R 1940
Kar 225
I L R 1940 Kar 287 Ref I L R
1940 Kar 435

A I R (PRIVY COUNCIL)

1915 P C 94 Rel 15 Luck 550
1917 P C 85 D st 15 Luck 95
1921 P C 69 Rel I L R 1940
Kar 334
— 195 Rel 15 Luck 360
1924 P C 109 Rel 15 Luck 30
— 09 Rel I L R 1940 Kar
135
1926 P C 100 Ref I L R 1940
Kar 435
1927 P C 70 Rel I L R 1940
Bom 505
— 242 Foll 19 Pat 753 (F B)
1929 P C 92 D st I L R 1940
Kar 396
— 190 Ref 1940 A L J Supp
3
1930 P C 57 Foll I L R 1940
Nag 48
— 120 Ref 15 Luck 209
— 270 Ref 1940 A L J 459
— 300 Ref I L R 1940 All
256
1931 P C 175 Rel I L R 1940
Kar 334
1932 P C 18 Rel 15 Luck 92
— 2 9 Rel 1940 A L J 502
1933 P C 183 Rel I L R 1940
Kar 190
1936 P C 83 Rel I L R 1940
Kar 14

1938 P C 103 Rel I L R 1940
Kar 196
— 254 Rel 1940 A L J 479

A I R (FEDERAL COURT)

1939 F C 1 Dist I L R 1940
Bom 58
1939 F C 43 D st I L R 1940
Bom 29

A I R (ALLAHABAD)

1920 All 436 Foll I L R 1940
All 201
1922 All 62 Ref 21 Lah 516
— 115 Ref 15 Luck 487
1925 All 290 Rel 15 Luck 468
— 348 Dist I L R 1940 All
18
— 456 Ref 21 Lah 516
— 474 Foll I L R 1940 All
371
— 556 Ref (1940) 2 M L J
393
1926 All 90 Rel I L R 1940 All
185
— 672 Foll I L R 1940 Nag
40
1927 All 98 Ref 1940 A L J 101
(F B)
— 422 Not Foll 19 Pat 578
— 514 Dist I L R 1940 Bom
225
— 597 Ref 1940 A L J 459
— 709 Rel 15 Luck 6
1928 All 241 Ref 15 Luck 209
1929 All 116 D st I L R 1940
All 105
— 195 Ref 1940 A L J 161
— 497 Ref 15 Luck 509
— 683 Ref I L R 1940 Bom
299 (F B)
1930 All 179 Ref 15 Luck 444
— 216 Ref 15 Luck 404
— 552 Ref (1940) 2 M L J
621
— 604 Foll I L R (1940) 1
Cal 393
— 659 Ref (1940) 2 M L J
952 (P C)
— 866 Ref 21 Lah 40
1931 All 320 Ref 19 Pat 838
— 499 Ref 15 Luck 418
— 655 Foll I L R 1940 Nag
302
— 695 Ref I L R 1940 All
159
— 727 Rel 15 Luck 150
1932 All 141 Dist 15 Luck 515
— 190 Rel 15 Luck 344
— 551 Dist (1940) 1 M L J
460
1933 All 113 D st I L R 1940
Nag 157
— 218 Ref 15 Luck 43
— 539 Ref I L R 1940 All
192
— 929 Dist 19 Pat 633
1934 All 132 Ref 1940 A L J
607
— 214 Ref I L R 1940 Bom
299 (F B)
— 524 Rel 1940 A L J 164

- 1934 All 688 (FB) Dist 1 L R
 1940 Kar 225
 941 Diss 19 Pat 208
 1935 All 174 Ref 1940 A L J
 459
 466 Foll I L R 1940
 Nag 267
 552 Rel 1940 A L J 547
 706 Ref 15 Luck 460
 742 Dist I L R 1940 Nag
 573 (FB)
 898 Ref I L R 1940 Nag
 170
 1936 All 11 Disappr I L R 1940
 Bom 709=42 Bom L R
 87
 83 Dist I L R 1940 All
 4
 456 Rel 15 Luck 385
 584 Ref 15 Luck 68
 659 Rel 1940 A L J 269
 1937 All 422 Appr (1940) ~ M L
 J 677
 1938 All 32 Rel 21 Lah 70
 47 Ref 15 Luck 104
 86 Ref 15 Luck 11
 165 Ref 15 Luck 11
 342 Ref I L R 1940 Bom
 317
 552 Appr I L R 1940 All
 246
 1939 All 31 Rel 15 Luck 456

AIR (BOMBAY)

- 1920 Bom 88 Rel I L R 1940
 All 136
 1921 Bom 169 Rel I L R 1940
 Kar 360
 1923 Bom 268 Appr I L R 1940
 All 246
 1925 Bom 310 Not Appl 1940
 A L J 563
 521 Ref 15 Luck 526
 1926 Bom 352 Dist 1940 A L J
 588
 491 Ref I L R 1940 All
 625 (P C)
 1927 Bom 366 Ref I L R (1940)
 1 Cal 519
 1928 Bom 175 Ref I L R 1940
 All 232
 1930 Bom 144 Rel (1940) 1
 M L J 868
 1931 Bom 146 Rel 15 Luck 360
 1932 Bom 61 Foll I L R 1940
 All 365
 582 Rel 15 Luck 360
 1933 Bom 209 Appr I L R 1940
 All 371
 1934 Bom 104 Ref I L R. (1940)
 1 Cal 231
 1935 Bom 237 Ref I L R 1940
 Nag 468
 1936 Bom 62 Dist 15 Luck 515
 1937 Bom 60 Foll I L R 1940
 Nag 320
 162 Ref 15 Luck 376
 476 Foll I L R 1940 All
 31
 508 (F B) Ref I L R 1940
 Bom. 42

- 1938 Bom 210 Ref 15 Luck 157
 704 Ref I L R 1940 Bom
 361

- 1939 Bom 71 Ref I L R 1940
 Bom 50
 512 Foll I L R 1940 Bom
 42
 1940 Bom 90 Foll 19 Pat 753
 (F B)

AIR (CALCUTTA)

- 1917 Cal 737 Ref (1940) 2
 M L J 760
 1918 Cal 334 Ref (1940) 2 M L
 J 760
 1920 Cal 167 Not Foll I L R
 (1940) 1 Cal 73
 741 Dist 19 Pat 172
 1921 Cal 55 Dist 15 Luck 392
 551 Rel I L R 1940 Nag
 324
 1924 Cal 637 Foll 4 Bom L R
 750
 1926 Cal 462 Diss 19 Pat 870
 (F B)
 992 Ref I L R 1940 Nag
 496
 1927 Cal 30 Ref 15 Luck 487
 309 Rel 15 Luck 365
 559 Rel I L R 1940 Kar
 447
 1928 Cal 644 Dist (1940) 2
 M L J 505
 668 Dist 15 Luck 95
 1929 Cal 159 (2) Not Foll (1940)
 2 M L J 17
 233 Dist 15 Luck 463
 445 Ref 15 Luck 253
 532 Not Foll (1940) 2
 M L J 562
 1931 Cal 268 Ref I L R 1940
 Bom 299 (F B)
 279 Ref 1940 A L J 188
 476 Rel 21 Lah 231
 1933 Cal 433 Dist I L R 1940
 Nag 488
 461 Dist I L R 1940 Nag
 37
 549 Ref 1940 A L J 118
 752 Ref I L R (1940) 1
 Cal 462
 1934 Cal 426 Ref 15 Luck 287
 730 Ref I L R 1940 Nag
 257
 745 Rel 15 Luck 150
 1935 Cal 282 Ref 15 Luck 509
 405 Dist 19 Pat 852
 413 Foll 21 Lah 199
 1936 Cal 593 Ref I L R 1940
 Nag 468
 1937 Cal 241 Ref 15 Luck 68
 467 Ref I L R 1940 Bom
 50
 468 Foll (1940) 1 M L J
 792
 732 Ref 15 Luck 376
 1938 Cal 325 Ref 21 Lah 40
 327 Ref 1940 Rang L R
 77
 557 Reversed (1940) 2
 M L J 577 (P C)

- 1939 Cal 354 Dist 15 Luck 157
 394 Ref 15 Luck 68

AIR (LAHORE)

- 1916 Lah 245 (F B) Rel I L R
 1940 Nag 324
 1921 Lah 225 Ref (1940) 2
 M L J 760
 384 Rel 21 Lah 231
 1922 Lah 329 Dist I L R 1940
 Nag 181
 1923 Lah 144 Foll I L R 1940
 All 201
 1924 Lah 183 (2) Ref (1940) 1
 M L J 877
 1925 Lah 456 Rel I L R 1940
 Nag 324
 1926 Lah 9 Foll 19 Pat 337
 372 Ref (1940) 2 M L J
 903=44 C W N 957=21
 Lah 493=67 I A 251
 (P C)
 559 Ref (1940) 2 M L J
 760
 1927 Lah 119 Ref 15 Luck 487
 199 Ref I L R 1940 Nag
 267
 353 Ref I L R 1940 Nag
 53
 1928 Lah 700 Ref (1940) 1
 M L J 877
 815 Rel 21 Lah 96
 1929 Lah 473 (2) Dist I L R.
 1940 Kar 370
 657 Ref 15 Luck 43
 1930 Lah 242 Foll 19 Pat 321
 712 Ref 15 Luck 418
 849 Rel 21 Lah 63
 1931 Lah 344 Foll 19 Pat 739
 601 Dist 15 Luck 132
 1932 Lah 30 Rel 21 Lah 84
 327 Ref 21 Lah 60
 1933 Lah 73 Foll I L R 1940
 All 201
 618 Dist 19 Pat 433
 1934 Lah 395 Dist 21 Lah 516
 771 Appr & Foll (1940)
 1 M L J 15 Luck 1
 (P C)
 790 Dist I L R 1940 Kar
 360
 865 Dist (1940) ~ M L J
 946
 1935 Lah 274 Dist I L R 1940
 Nag 261
 292 Ref (1940) 1 M L J
 235
 733 Not Foll 19 Pat 123
 (F B)
 971 Dist 15 Luck 332
 975 Rel 15 Luck 332
 1936 Lah 48 Rel (1940) 2 M L J
 160
 87 Rel I L R 1940 Kar
 174
 603 Diss I L R (1940) 1
 Cal 401
 873 Ref 21 Lah 516
 1937 Lah 151 Ref 15 Luck 63
 560 Ref 21 Lah 63
 1938 Lah 200 Ref 1940 A L J
 607

1938 Lah 217 Foll I L R 1940
Nag 512
— 369 (F B) Affirmed (1940)
2 M L J 903=44 C W V
957 (P C.)
— 458 Ref 21 Lah 40
— 767 Ref I L R 1940 Nag
170
— 869 Ref (1940) 2 M L J
436
1939 Lah 52 Rel 15 Luck 332
— 162 D st 21 Lah 70
— 168 Ref 21 Lah 63
— 172 Ref 15 Luck 157

AIR (MADRAS)

1916 Mad. 1068 Rel I L R 1940
Nag 324
1917 Mad 285 Rel I L R 1940
Nag 324
1919 Mad 22 Not Foll I L R
1940 Nag 225
1920 Mad 580 Rel I L R 1940
Nag 324
1922 Mad 334 Ref 21 Lah 363
1923 Mad 392 Dist 19 Pat. 433.
— 444 Not Appr I L R
1940 All 185
1924 Mad 118 Ref 15 Luck 68
— 863 Ref I L R 1940 Nag
55
1925 Mad 61 D st I L R 1940
All 360—1940 A L J 340
— 688 Rel 21 Lah 345
— 725 D st I L R 1940 Nag
324
— 1041 Ref 1940 A L J 320
— 1108 Appr (1940) 1 M L
J 766 (F B)
1926 Mad 258 Disappr I L R
1940 All 201
— 453 Ref 1940 A L J 180=

1929 Mad 323 Foll I L R.
(1940) 1 Cal 33
— 465 Foll (1940) 1 M L J
740
— 782 Ref (1940) 2 M L J
733
1930 Mad 646 D st (1940) 2
M L J 356
— 865 Ref I L R (1940) 1
Cal 468
— 980 Rel 15 Luck 463
1931 Mad 83 Ref 15 Luck 460
— 133 Not Foll I L R. 1940
Nag 324
— 242 Ref 1940 A L J 547
15 Luck 344
— 613 Ref (1940) 1 M L J
791
— 813 Rel 15 Luck 150
— 825 Ref I L R 1940 Nag
331
1932 Mad 21 Ref I L R 1940
Nag 394
— 424 Ref I L R 1940 All
274 (F B)
1933 Mad 710 Dist I L R 1940
Nag 37
— 833 Ref 15 Luck 68
1935 Mad 399 D st 15 Luck 332
— 899 Ref (1940) 1 M L J
766 (F B)
1936 Mad 524 Foll (1940) 2 M
L J 977
— 635 Foll I L R 1940 Nag
509
— 682 Ref 15 Luck 509
— 991 Ref I L R 1940 Nag
170
1937 Mad 419 Not Foll I L R
1940 Nag 170
— 528 Ref I L R 1940 Nag
170
— 336 Ref 43 Bom L R 767
(P C.)
— 645 Dist I L R. (1940) 1
Cal 64
— 717 Dist (1940) 2 M L J
606
— 854 Appr I L R 1940
Bom 709=42 Bom L R
857
— 953 Ref 15 Luck 509
1938 Mad 185 Ref I L R 1940
Nag 170
— 364 Foll 19 Pat 382
— 465 D st (1940) 1 M L J
134
— 688 Not Foll I L R 1940
Nag 170
— 779 Not Foll 19 Pat 753
(F B)
— 965 Ref I L R 1940 All
380 (S B)
1939 Mad 480 Ref (1940) 2
M L J 606
— 530 Dist I L R 1940 Nag
488
— 840 D st I L R 1940 All
396=1940 A L J 41 (F
B) 21 Lah 242
— 965 Ref 1940 A L J 306
(F B)

AIR (NAGPUR)

1922 Nag 50 Foll I L R 1940
Nag 437
1924 Nag 234 Rel I L R 1940
Nag 244
1925 Nag 9 Disappr I L R 1940
Nag 441
— 297 Ref 15 Luck 19
— 385 Disc I L R 1940 Nag
573 (F B)
— 396 Rel I L R 1940 Nag
167
— 409 Ref 1940 A L J 357=
I L R 1940 All 531
1926 Nag 389 Rel 21 Lah 70
— 393 Ref I L R 1940 Nag
569
1927 Nag 119 Foll I L R 1940
Nag 522
— 351 Rel I L R 1940 Nag
255
1928 Nag 124 Disappr I L R
1940 Nag 441
— 281 Rel I L R 1940 Nag
348 (F B)
— 299 D st I L R 1940 Nag
569
1930 Nag 89 Rel I L R 1940
Nag 167
— 279 Doubted I L R 1940
Nag 89
1932 Nag 90 Foll I L R 1940
Nag 181
1933 Nag 117 Doubted I L R
1940 Nag 496
— 205 Ref I L R 1940 Nag
190
— 218 Foll I L R 1940 Nag
312
— 237 Ref 15 Luck 68
1934 Nag 201 Expl (1940) 2
M L J 241
— 243 Rel 15 Luck 332
1936 Nag 174 Ref & Rel 15
Luck 43 D st 21 Lah
70
1938 Nag 9 Ref (1940) 2 M L J
672
— 97 Not Foll 19 Pat 382
— 134 (F B) Not Foll 19 Pat
382
— 298 Disc 15 Luck. 229
(F B)

AIR (ODDH)

193 Oudh 29 D st 15 Luck 509
1924 Oudh 261 Rel I L R (1940)
1 Cal 666
1925 Oudh 385 Ref 15 Luck 175
— 645 Ref I L R 1940 All
192=1940 A L J 269
1926 Oudh 182 Ref 15 Luck 444
— 385 D st 15 Luck 95
1927 Oudh 181 Ref 15 Luck 444
— 509 Disappr I L R 1940
All 91
— 575 Ref 15 Luck 126
1929 Oudh 65 Ref 15 Luck 30
— 115 Ref 15 Luck. 112

- 1934 All 688 (FB) Dist I L R
 1940 Kar 225
 941 Diss 19 Pat 208
 1935 All 174 Ref 1940 A L J
 459
 466 Foll I L R 1940
 Nag 267
 552 Rel 1940 A L J 547
 706 Ref 15 Luck 460
 742 D st I L R 1940 Nag
 573 (FB)
 898 Ref I L R 1940 Nag
 170
 1936 All 11 Disapp'r I L R 1940
 Bom 709-42 Bom L R
 857
 83 Dist I L R 1940 All
 4
 456 Rel 15 Luck 385
 584 Ref 15 Luck 68
 659 Ref 1940 A L J 269
 1937 All 422 App'r (1940) 2 M L
 J 677
 1938 All 32 Rel 21 Lah 70
 47 Ref 15 Luck 104
 86 Ref 15 Luck 11
 165 Ref 15 Luck 11
 342 Ref I L R 1940 Bom
 317
 552 App'r I L R 1940 All
 246
 1939 All 31 Rel 15 Luck 456

AIR (BOMBAY)

- 1920 Bom 88 Rel I L R 1940
 All 136
 1921 Bom 169 Rel I L R 1940
 Kar 360
 1923 Bom 268 App'r I L R 1940
 All 246
 1925 Bom 310 Not Appl 1940
 A L J 563
 521 Ref 15 Luck 526
 1926 Bom 352 Dist 1940 A L J
 588
 491 Ref I L R 1940 All
 625 (PC)
 1927 Bom 366 Ref I L R (1940)
 1 Cal 519
 1928 Bom 175 Ref I L R 1940
 All 232
 1930 Bom 144 Rel (1940) 1
 M L J 868
 1931 Bom 146 Rel 15 Luck 350
 1932 Bom 61 Foll I L R 1940
 All 365
 582 Rel 15 Luck 360
 1933 Bom 209 App'r I L R 1940
 All 371
 1934 Bom 104 Ref I L R (1940)
 1 Cal 231
 1935 Bom 257 Ref I L R 1940
 Nag 468
 1936 Bom 62 Dist 15 Luck 515
 1937 Bom 60 Foll I L R 1940
 Nag 320
 162 Ref 15 Luck 376
 476 Foll I L R 1940 All
 31
 508 (FB) Ref I L R 1940
 Bom 42

- 1938 Bom 210 Ref 15 Luck 157
 704 Ref I L R 1940 Bom
 361
 1939 Bom 71 Ref I L R 1940
 Bom 50
 512 Foll I L R 1940 Bom
 42
 1940 Bom 90 Foll 19 Pat 753
 (FB)

AIR (CALCUTTA)

- 1917 Cal 737 Ref (1940) 2
 M L J 760
 1918 Cal 334 Ref (1940) 2 M L
 J 760
 1920 Cal 167 Not Foll I L R
 (1940) 1 Cal 73
 741 Dist 19 Pat 172
 1921 Cal 55 Dist 15 Luck 392
 551 Rel I L R 1940 Nag
 324
 1924 Cal 637 Toll 4th Bom L R
 750
 1926 Cal 462 Diss 19 Pat 870
 (FB)
 992 Ref I L R 1940 Nag
 496
 1927 Cal 30 Ref 15 Luck 487
 309 Rel 15 Luck 365
 559 Ref I L R 1940 Kar
 447
 1928 Cal 644 Dist (1940) 2
 M L J 555
 668 Dist 15 Luck 95
 1929 Cal 159 (2) Not Foll (1940)
 2 M L J 17
 233 Dist 15 Luck 463
 443 Ref 15 Luck 253
 532 Not Foll (1940) 2
 M L J 562
 1931 Cal 268 Ref I L R 1940
 Bom 299 (FB)
 279 Ref 1940 A L J 188
 476 Ref 21 Lah 231
 1933 Cal 433 Dist I L R 1940
 Nag 488
 461 D st I L R 1940 Nag
 37
 549 Ref 1940 A L J 118
 752 Ref I L R (1940) 1
 Cal 462
 1934 Cal 426 Ref 15 Luck 287
 730 Ref I L R 1940 Nag
 257
 745 Rel 15 Luck 150
 1935 Cal 282 Ref 15 Luck 509
 405 Dist 19 Pat 852
 413 Foll 21 Lah 199
 1936 Cal 593 Ref I L R 1940
 Nag 468
 1937 Cal 241 Ref 15 Luck 68
 467 Ref I L R 1940 Bom
 50
 468 Foll (1940) 1 M L J
 292
 732 Ref 15 Luck 376
 1938 Cal 323 Ref 21 Lah 40
 327 Ref 1940 Rang L R
 77
 557 Reversed (1940) 2
 M L J 577 (PC)

- 1939 Cal 334 Dist 15 Luck 157
 394 Ref 15 Luck 68
 AIR (LAHORE)
 1916 Lah 245 (FB) Rel I L R
 1940 Nag 324
 1921 Lah 225 Ref (1940) 2
 M L J 760
 384 Rel 21 Lah 231
 1922 Lah 329 Dist I L R 1940
 Nag 181
 1923 Lah 144 Foll I L R 1940
 All 201
 1924 Lah 188 (2) Ref (1940) 1
 M L J 877
 1925 Lah 456 Rel I L R 1940
 Nag 324
 1926 Lah 9 Foll 19 Pat 337
 372 Ref (1940) 2 M L J
 903-44 C W N 957-21
 Lah 493-67 IA 251
 (PC)
 559 Ref (1940) 2 M L J
 760
 1927 Lah 119 Ref 15 Luck 487
 119 Ref I L R 1940 Nag
 267
 305 Ref I L R 1940 Nag
 50
 1928 Lah 700 Ref (1940) 1
 M L J 877
 815 Rel 21 Lah 96
 1929 Lah 473 (2) Dist I L R
 1940 Kar 370
 637 Ref 15 Luck 43
 1930 Lah 42 Foll 19 Pat 321
 712 Ref 15 Luck 418
 849 Rel 21 Lah 63
 1931 Lah 344 Foll 19 Pat 739
 601 Dist 15 Luck 132
 1932 Lah 30 Rel 21 Lah 84
 322 Ref 21 Lah 60
 1933 Lah 73 Foll I L R 1940
 All 201
 618 Dist 19 Pat 433
 1934 Lah 395 Dist 21 Lah 516
 771 App'r & Foll (1940)
 1 M L J 15 Luck 1
 (PC)
 790 Dist I L R 1940 Kar
 360
 865 D st (1940) 1 M L J
 946
 1935 Lah 274 D st I L R 1940
 Nag 261
 292 Ref (1940) 1 M L J
 235
 733 Not Foll 19 Pat 123
 (FB)
 971 D st 15 Luck 332
 975 Rel 15 Luck 332
 1936 Lah 48 Rel (1940) 1 M L J
 160
 87 Ref I L R 1940 Kar
 174
 683 Diss I L R (1940) 1
 Cal 401
 873 Ref 21 Lah 516
 1937 Lah 151 Ref 15 Luck 63
 560 Ref 21 Lah 63
 1938 Lah 200 Ref 1940 A L J
 607

1938 Lah 217 Foll I L R 1940
Nag 512
— 369 (F B) Affirmed (1940)
2 M L J 903=44 C W N
957 (F C.)
— 458 Ref 21 Lah 40
— 767 Ref I L R 1940 Nag
170
— 869 Ref (1940) 2 M L J
426
1939 Lah 52 Rel 15 Luck 332
— 162 D st 21 Lah 70
— 163 Ref 21 Lah 63
— 172 Ref 15 Luck 157

A I R (MADRAS)

1916 Mad 1068 Rel I L R 1940
Nag 324
1917 Mad 285 Rel I L R 1940
Nag 324
1919 Mad 22 Not Foll I L R
1940 Nag 225
1920 Mad 580 Rel I L R 1940
Nag 324
1922 Mad 334 Ref 21 Lah 363
1923 Mad 392 Dist 19 Pat 433
— 444 Not Appr I L R
1940 All 185
1924 Mad 118 Ref 15 Luck 68
— 863 Ref I L R 1940 Nag
55
1925 Mad 61 Dist I L R 1940
All 360=1940 A L J 340
— 688 Rel 21 Lah 345
— 725 D st I L R 1940 Nag
324
— 1041 Rel 1940 A L J 320
— 1108 Appr (1940) 1 M L
J 766 (F B)
1926 Mad 258 Dsappr I L R
1940 All 201
— 453 Ref 1940 A L J 180=
I L R 1940 All 246 (F B)
— 1021 Foll 42 Bom L R
750
1927 Mad 271 Dist 15 Luck 332
— 507 Dist 15 Luck 150
— 568 Ref 15 Luck 487
— 650 D sc 19 Pat 1
— 687 Dsappr I L R 1940
All 201
— 816 Not Foll I L R 1940
Kar 162
— 851 Ref I L R 1940 Kar
414
— 931 Foll 19 Pat 433
— 944 Rel 15 Luck 332
— 1159 D st (1940) 1 M L J
877
1928 Mad 317 Not Foll 19 Pat
739
— 491 Ref I L R 1940 All
201
— 590 Ref (1940) 2 M L J
753
— 630 D st 19 Pat 669
— 830 Ref I L R 1940 Nag
55
1929 Mad 21 Ref I L R 1940
Kar 275
— 42 Ref (1940) 1 M L J
817

1929 Mad 323 Foll I L R
(1940) 1 Cal 33
— 455 Foll (1940) 1 M L J
740
— 702 Ref (1940) 2 M L J
753
1930 Mad 646 Dist (1940) 2
M L J 356
— 865 Ref I L R (1940) 1
Cal 468
— 980 Rel 15 Luck 463
1931 Mad 83 Ref 15 Luck 460
— 133 Not Foll I L R 1940
Nag 324
— 242 Ref 1940 A L J 547
15 Luck 344
— 613 Ref (1940) 1 M L J
791
— 819 Rel 15 Luck 150
— 825 Ref I L R 1940 Nag
331
1932 Mad 21 Ref I L R 1940
Nag 394
— 424 Ref I L R 1940 All
474 (F B)
1933 Mad 710 Dist I L R 1940
Nag 37
— 833 Ref 15 Luck 68
1935 Mad 399 Dist 15 Luck 332
— 899 Ref (1940) 1 M L J
766 (F B)
1936 Mad 524 Foll (1940) 2 M
L J 977
— 635 Foll I L R 1940 Nag
509
— 682 Ref 15 Luck 509
— 991 Ref I L R 1940 Nag
170
1937 Mad 419 Not Foll I L R
1940 Nag 170
— 528 Ref I L R 1940 Nag
170
— 536 Ref 43 Bom L R 767
(F C)
— 645 Dist I L R (1940) 1
Cal 64
— 717 Dist (1940) 2 M L J
606
— 834 Appr I L R 1940
Bom 709 42 Bom L R
857
— 953 Ref 15 Luck 509
1938 Mad 185 Ref I L R 1940
Nag 170
— 364 Foll 19 Pat 382
— 465 Dist (1940) 1 M L J
134
— 688 Not Foll I L R 1940
Nag 170
— 779 Not Foll 19 Pat 753
(F B)
— 965 Ref I L R 1940 All
380 (S B)
1939 Mad 480 Ref (1940) 2
M L J 606
— 530 Dist I L R 1940 Nag
468
— 840 Dist I L R 1940 All
396=1940 A L J 241 (F
B) 21 Lah 242
— 965 Ref 1940 A L J 306
(F B)

A I R (NAGPUR)

1922 Nag 50 Foll I L R 1940
Nag 437
1924 Nag 234 Rel I L R 1940
Nag 244
1925 Nag 9 Dsappr I L R 1940
Nag 441
— 297 Ref 15 Luck 19
— 385 Dist I L R 1940 Nag
573 (F B)
— 396 Rel I L R 1940 Nag
167
— 409 Ref 1940 A L J 357=
I L R 1940 All 531
1926 Nag 389 Rel 21 Lah 70
— 393 Ref I L R 1940 Nag
569
1927 Nag 119 Foll I L R 1940
Nag 522
— 351 Rel I L R 1940 Nag
255
1928 Nag 124 Dsappr I L R
1940 Nag 441
— 281 Rel I L R 1940 Nag
348 (F B)
— 299 Dist I L R 1940 Nag
569
1930 Nag 89 Rel I L R 1940
Nag 167
— 279 Doubted I L R 1940
Nag 89
1932 Nag 90 Foll I L R 1940
Nag 181
1933 Nag 117 Doubted I L R
1940 Nag 496
— 205 Ref I L R 1940 Nag
190
— 218 Foll I L R 1940 Nag
312
— 237 Ref 15 Luck 68
1934 Nag 201 Expl (1940) 2
M L J 241
— 243 Ref 15 Luck 332
1936 Nag 174 Ref & Rel 15
Luck 43 Dist 21 Lah
70
1938 Nag 9 Ref (1940) 2 M L J
672
— 97 Not Foll 19 Pat 382
— 134 (F B) Not Foll 19 Pat
382
— 298 Dist 15 Luck 229
(F B)

A I R (ODDH)

1923 Oudh 29 Dist 15 Luck 509
1924 Oudh 261 Rel I L R (1940)
1 Cal 666
1925 Oudh 385 Ref 15 Luck 175
— 645 Ref I L R 1940 All
197 1940 A L J 269
1926 Oudh 182 Ref 15 Luck 444
— 38 Dist 15 Luck 95
1927 Oudh 181 Ref 15 Luck 444
— 509 Dsappr I L R 1940
All 91
— 775 Ref 15 Luck 126
1929 Oudh 65 Ref 15 Luck
218 112

1930 Oudh 17 Rel 16 Luck 175
 —505 Ref I L R 1940 Nag
 232
 1934 Oudh 21 Overruled 15 Luck
 157
 —131 D st I L R 1940 All
 192=1940 A L J 269
 1936 Oudh 173 Rel 15 Luck 95
 —340 Ref 15 Luck 68
 1937 Oudh 158 Rel 1940 A L J
 180 (F B)
 —17 (F B) Rel 1940 A L J
 560
 1938 Oudh 210 Foll I L R 1940
 Nag 63

AIR (PATNA)

1922 Pat 564 Ref 15 Luck 43
 1923 Pat 143 Dsappr I L R
 1910 Mad 125
 —331 Foll I L R 1940 Nag
 496
 —375 D st 15 Luck 95
 1924 Pat 81 Foll I L R 1940
 Nag 55
 —635 D st I L R 1940 Nag
 125
 —696 Ref (1940) 2 M L J
 932 (P C)
 1925 Pat 575 Ref 1940 A L J
 588
 1926 Pat 49 Ref 15 Luck 418
 1927 Pat 271 D st 15 Luck 95
 1928 Pat 396 Foll 19 Pat 1
 —552 Ref I L R 1940 All
 71
 1929 Pat 273 Ref 19 Pat 491
 —385 Rel I L R (1940) 1
 Cal 33—44 C W N 149
 —431 Overruled 19 Pat 1 3
 (F B)
 —473 D st I L R 1940 Kar
 431
 —637 Ref 15 Luck 68
 1931 Pat 33 Rel 15 Luck 30
 1932 Pat 73 Foll I L R 1940
 Nag 63
 —332 Ref C W N 1940 F R
 21
 1933 Pat 457 Ref I L R 1940
 Bom 480—42 Bom L R
 501
 1934 Pat 34 Not Foll 19 Pat 85
 —99 Ref 15 Luck 537
 —124 Foll I L R 1940 All
 365
 —532 Appr I L R 1940 All
 246=1940 A L J 180 (F
 B)
 —644 Ref 19 Pat 715
 —646 Ref I L R 1940 Kar
 417
 1935 Pat 60 D ss I L R 1940
 Kar 36
 —237 Not Foll I L R 1940
 Nag 55
 —492 Ref I L R 1940 All
 58=1940 A L J 419

1936 Pat 11 Rel 1940 A L J
 206
 —60 Foll 19 Pat 753 (F B)
 1937 Pat 149 Foll 21 Lah 199
 —239 D st 19 Pat 838
 —349 D st I L R 1940 Nag
 324
 —517 D ss 19 Pat 618 (F
 B)
 —607 Dsappr I L R 1940
 Mad 79
 1938 Pat 113 D st 19 Pat 275
 1939 Pat 525 Ref I L R 1940
 Nag 488

AIR (PESHAWAR)

1934 Pesh 81 (1) Rel 21 Lah 70

AIR (RANGOON)

1924 Rang 137 D st I L R 1940
 All 192
 1926 Rang 85 Ref 15 Luck 287
 1928 Rang 1 Appr I L R 1940
 All 31 Ref 15 Luck
 503
 —141 Rel I L R (1940) 1
 Cal 161
 —243 Ref I L R 1940 Kar
 414
 1929 Rang 192 Ref 19 Pat 862
 1930 Rang 355 Ref I L R 1940
 All 262
 1931 Rang 161 Rel I L R 1940
 Nag 488
 —208 Rel 15 Luck 399
 1932 Rang 54 Ref 19 Pat 862
 1933 Rang 164 Foll I L R 1940
 Nag 61
 —377 Rel 15 Luck 399
 1934 Rang 93 Ref I L R 1940
 All 31
 —118 Foll 19 Pat 321
 —302 Dsappr I L R 1940
 All 31
 —304 Ref 15 Luck 43
 1935 Rang 273 Rel I L R 1940
 Kar 235
 1936 Rang 332 D ss (1940) 1
 M L J 328
 1937 Rang 387 Cons 1940 Rang
 L R 441
 —399 Ref 1940 Rang L R
 77
 1938 Rang 30 Appr 1940 Rang
 L R 104
 —49 Ref 15 Luck 43
 —94 Ref I L R 1940 All
 43
 —216 Diss 1940 Rang L R
 54
 —678 Appr 1940 Rang L R
 97
 1939 Rang 15 Appr 1940 Rang
 L R 82
 —206 Ref 15 Luck 43
 —341 Foll 1940 Rang L R
 32
 1940 Rang 31 Ref 1940 Rang
 L R 28
 —381 Ref 1940 Rang L R
 386

AIR (SIND)

1925 Sind 116 Rel I L R 1940
 Kar 249
 1929 Sind 179 (1) Rel 21 Lah
 143
 1931 Sind 153 Foll 19 Pat 159
 (F B)
 1932 Sind 62 Rel I L R 1940
 Kar 235
 —594 Ref 1940 Rang L R
 244
 1933 Sind 85 Rel I L R 1940
 Kar 235
 —365 Not Foll I L R 1940
 Kar 385
 1935 Sind 13 (F B) Dist 42 Bom
 L R 787
 1936 Sind 71 D sc I L R 1940
 Kar 513
 —190 Rel I L R 1940 Kar
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 —205 D st I L R 1940 Kar
 22
 1937 Sind 68 Ref I L R 1940 All
 43
 —129 Ref 15 Luck 460
 —181 Foll I L R 1940 Nag
 509
 —226 Ref 15 Luck 157
 1939 Sind 206 Rel I L R 1940
 Nag 170

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 100
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 318
 6 I C 650 Diss 15 Luck 107
 8 I C 527 Appr I L R 1940 All
 91
 —677 Ref I L R 1940 All
 60 (F B)
 11 I C 25 Ref (1940) 2 M L J
 30
 —192 Rel I L R 1940 All
 599=1940 A L J 443
 —338 D sc 19 Pat 354
 13 I C 659 Rel (1940) 2 M L J
 317
 15 I C 321 Ref 1940 Rang L R 7
 16 I C 443 Ref 15 Luck 290
 —933 Ref (1940) 2 M L J
 393
 17 I C 915 Foll 19 Pat 404
 19 I C 872 Ref 19 Pat 553
 (F B)
 20 I C 882 Foll I L R 1940 All
 136
 22 I C 275 Appr I L R 1940
 All 318
 24 I C 81 Ref I L R 1940 All
 599=1940 A L J 443
 —100 Ref (1940) 2 M L J
 903—44 C W N 957 (P
 C)
 26 I C 486 D ss 19 Pat 870 (F
 B)
 —939 Ref 15 Luck 537
 27 I C 152 Ref 15 Luck 19
 —611 Ref 44 C W N 240

28 I C. 536 Foll 19 Pat 494
 —957 Diss (1910) 2 M L J
 570
 29 I C. 199 Rel 1940 A L J 348
 —572 Rel 21 Lah 63
 30 I C. 256 Ref (1910) 2 M L J
 621
 34 I C. 407 Dist I L R. 1910 All
 338=1940 A L J 344
 35 I C. 614 Foll (1910) 2 M L J
 502
 —868 (F B) Ref 15 Luck
 376
 39 I C. 250 Rel 15 Luck 545
 —991 Foll 19 Pat 301
 40 I C. 418 Rel 1910 A L J 348
 42 I C. 803 Appr I L R 1940
 All 253=1940 A L J 118
 43 I C. 537 Cons (1940) 2 M L J
 502
 44 I C. 557 Rel 1940 A L J 174
 —I L R 1940 All 225
 47 I C. 997 Dist 15 Luck 332
 49 I C. 93 Foll 19 Pat 208
 51 I C. 372 Dist 15 Luck 509
 52 I C. 497 (P C.) Rel 21 Lah
 60
 53 I C. 2 Disc 19 Pat 1
 —593 Ref 15 Luck 487
 55 I C. 584 Not Foll I L R. 1940
 Nag 221
 —766 Appr I L R 1940 All
 542=1940 A L J 470
 57 I C. 902 Rel I L R. 1940 Nag
 198
 59 I C. 273 Ref 44 C W N 1109
 —885 Rel 21 Lah 60
 60 I C. 759 Ref 44 C W N 1103

61 I C. 806 Diss I L R. (1940) 1
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 62 I C. 979 Rel 15 Luck 321
 63 I C. 351 Appr I L R 1940 All
 225=1940 A L J 174
 68 I C. 631 Ref 19 Pat 433
 —671 Ref 15 Luck 290
 69 I C. 992 Foll 21 Lah 363
 75 I C. 906 Foll I L R 1940 All
 136
 77 I C. 1 Appr I L R 1940 All
 542=1940 A L J 470
 —718 Rel (1940) 2 M L J
 572
 79 I C. 881 Ref (1940) 1 M L J
 605
 80 I C. 456 Ref & Rel 15 Luck
 26
 87 I C. 735 Dist 19 Pat 1
 90 I C. 629 Rel 15 Luck 321
 91 I C. 69 Ref I L R 1940 All.
 23
 92 I C. 516 Ref 19 Pat 433
 95 I C. 315 Diss 1940 Rang L R
 151
 —432 Ref 15 Luck 112
 97 I C. 586 Ref 44 C W N 383
 101 I C. 674 Disc 19 Pat 354
 109 I C. 272 Appr I L R 1940
 All 542
 —273 Rel 1940 A L J 470
 —776 Ref 21 Lah 60
 116 I C. 308 Ref I L R 1940 All
 100
 117 I C. 298 Rel 42 Bom L R
 750
 125 I C. 625 Ref 44 C W N 586
 127 I C. 641 Ref (1940) 2 M L J
 326

134 I C. 594 Rel I L R 1940 All
 23
 139 I C. 186 Ref 1940 Rang L R
 129
 146 I C. 26 Diss 19 Pat 870
 (F B)
 —233 Ref 44 C W N 368
 151 I C. 290 Diss 44 C W N 552
 153 I C. 462 Appr (1910) 1 M L
 J 131
 155 I C. 610 Foll 19 Pat 870 (F
 B)
 156 I C. 949 Ref 1940 Rang L R
 129
 164 I C. 713 Diss 44 C W N 352
 171 I C. 13 Rel 15 Luck 321
 177 I C. 659 Ref 44 C W N 282
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 L R 215
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 13 Cr L J 536 Rel 21 Lah 143
 17 Cr L J 488 Diss 1940 Rang
 L R 244
 27 Cr L J 111 Rel 21 Lah 143
 29 Cr L J 274 Cons 1940 Rang
 L R 502
 32 Cr L J 809 Ref 1940 Rang
 L R 244
 34 Cr L J 311 Foll 42 Bom L R
 857
 —317 Appr I L R 1940.
 Bom 709
 37 Cr L J 385 Disc 1940 Rang
 L R 256

THE YEARLY DIGEST, 1940.

I—INDIAN DECISIONS.

ABADI See (1) LANDLORD AND TENANT (2) CO SHARERS

—*Abandonment—Proof of intention—House left in disrepair and not rebuilt—If necessarily proves abandonment*

A tenant who abandons a site leaves the site to revert to the zamindar. In such a case proof of intention to abandon is necessary. The mere fact that a house is left in a dilapidated condition and is not rebuilt does not necessarily prove that the tenant means to abandon the site or lead to the result that the zamindar is entitled to enter upon the land (*Allsop J*) MISRI LAL v DURGA NARAIN SINGH 189 I C 623—13 B A 109—1910 A W R (H C) 171—1910 R D 213—A I R 1910 All 317

—*Licence to build—Building put up leaving a portion as shan darwaza—Rights of the licensee*

Where a person was given a licence to build a house on a piece of land in the abadi and he proceeds to build a house keeping a portion of the land vacant to be used as

ACT OF STATE

ABATEMENT See PRACTICE—APPEAL—ABATEMENT—C P CODE O 22

—Of rent See (1) LANDLORD AND TENANT
(2) TRANSFER OF PROPERTY ACT—LEASES
(3) VARIOUS TENANCY ACTS

ACCOUNTS

See also (1) DEBTOR AND CREDITOR

—Suit for by co owner See CO OWNER—SUIT FOR ACCOUNTS

—*Suit for—Relief when can be granted*
A right to claim a statement of accounts is an

suit whether against his licensor or against any third party. As against the licensor the licence is unrevocable under S 60 (d) of the Easements Act (*Collister J*) AZHAR HUSAIN v MANSAB

189 I C 835—13 B A 139—1910 A W R (H C) 290—1910 A L J 354—1910 R D 187 A I R 1910 All 324

—*Tenant's right to transfer—Difference between rural and urban areas*

In the United Provinces generally the rural areas or agricultural villages are not transfer houses and the sites of houses but are built. But the tenants in urban areas are entitled to transfer the houses as they stand upon the sites and the right in the urban area. The right of the zamindar or the right of the tenant to succeed his predecessor is not affected. NARAIN S

rights. According to the terms of a lease the lessees were liable to pay rent at the rate of Rs 10 per month but if the lessees were to sublet and recover more than Rs 60 per month they were also liable to pay 1/10th of the excess to the lessors. The lessor alleged that the lessees had failed to pay rent according to the terms of this lease and sued to recover certain sum as rent and also claimed rendition of accounts alleging that the lessees were realizing more than Rs 60 per month, from

tion of accounts could be
* LAL v RAM RICHHPAL
= A I R 1910 Lah 120

ACQUIESCENCE See also ESTOPPEL

ABANDON

—Of

—Of holding See (1) THE VARIOUS TENANCY ACTS
(2) LANDLORD AND TENANT

Lucknow was the property of the owners of the houses in possession. The Crown thus waived its right in favour of the occupiers of the houses and not in

ADMINISTRATION

favour of the original owners of the sites (*Hamilton, Yorke and Kadhakrishna, JJ*), on difference of opinion

ADMINISTRATION

See (1) **INSOLVENCY**

(2) **PRESIDENCY TOWNS INSOLVENCY ACT, S 108**

(3) **SUCCESSION ACT**

(4) **TRUSTS**

Administration suit—Suit based on decree—

estate of a deceased debtor on the basis of a decree obtained against him during his lifetime the decree holder must have a decree which can be enforced. A decree the execution of which is barred by time cannot confer on the holder of the decree a right to maintain a suit on such a decree. Where a decree cannot be executed except by leave of the Court of Wards which has not been obtained as required by statute, it is a decree which cannot be enforced and therefore cannot give the decree holder a right to maintain an administration suit solely for its satisfaction (*Harrier, C J and Manohar Lal J*) **LACHMI NARAYAN v MAHOMED MEHDI** 21 Pat LT 917

Suit for—Maintainability—Suit between rival claimants

O 20 R 13 C P Code, makes it clear that administration suits are intended to be filed for the purposes of taking an account of any property and for its due administration under the decree of the Court. A suit between rival claimants to the estate of a deceased person, each one claiming to be his sole heir, is not a suit for an account of property and for its due adminis-

tration of the property wrongfully withheld by another person claiming to be the heir (*Abdul Rashid, J*) **CHAND NARAIN v GHASI RAM** 189 IC 894=13 RL 123=42 PLR 145=A LR 1940 Lah 179

ADMINISTRATION SUIT—Constructive trustee—Liability of—Extent See 1939 Dig, Col 2 **ATISUKHLAL v NATVARLAL**

ADMIRALTY—Collis

Burden of proof See

SAGAR ABDULLAH v S, S "ELLORA"

ILR (1940) Kar 53=189 IC 9=13 RS 16

Collision—Actionability—Carriage of wrong

ADVERSE POSSESSION

—Regulations for preventing collisions at sea Art 28—Failure to give sound signals to country craft 4 YOUSUF

13 RS 16

ADVERSE POSSESSION

Acquisition of title

Animus

Burden of proof

Co heirs

Co owners

Co-sharers

Essentials

Interruption

Landlord and Tenant

Mortgagor and mortgagee

Nature of possession

Pardanashin lady

Possession held by wrongdoer

Possession under agreement

Possession under invalid title

Presumption as to

Religious endowment

Rival landlords

Submerged land

See (1) **LIMITATION**

(2) **LIMITATION ACT, S 28 AND ARTS 142 AND 144**

—Acquisition of title—Possession by tenant See 1939 Dig, Col 5 **ABDUL LATIF v NAWAB KHAJAH HABIBULLA** 185 IC 714=12 RC 404

—Acquisition of title—Law of limitation before 1877

Per *Nasim Ali, J*—Even before 1877, the law of limitation was regarded not simply as barring the remedy but also as conferring title on the adverse possessor (*Nasim Ali and Rau, JJ*) **RAJNANDINI**

1939 Dig Col 5 **VEERABHADRAYYA v SKETHAMMA** A LR 1940 Mad 236

—Burden of proof

Where the plaintiff sues for possession of an immovable property on the basis of his title and the defendant

—Burden of proof—Waste and jungle land and tank—Presumption of possession

The possession of the heirs under the Mahomedan Law will not be adverse till an heir is dispossessed of the property (*Birdi, J*) **ZAINAB BI v ABDUR RAUF MAN** 189 IC 872

or dead or bankrupt—Suit against—Maintainability See 1939 Dig, Col 3 **YOUSUF SAGAR ABDULLAH v S S "ELLORA"** ILR (1940) Kar 53=189 IC 9=13 RS 16

ADVERSE POSSESSION.

—Co-owners

One co-owner cannot hold property adversely to the other co-owner unless he by means of some overt Act, asserts adverse possession or deals with the property in such a manner that his acts amount to an ouster of the other co-owner (*Tek Chand and Abdul Rashid, JJ*)
MURLI DHAR v. AMAR NATH 42 P L R 318

—Co-owners—Essentials—Co-heirs under Mahomedan Law—Alienee from some—Possession of—adverse to rest See 1939 Dig, Col 5 MANGALMA AGANMAL v. MAHOMED USIF BHORO

185 I C 11 = 12 R S 151

—Co-owners—Ouster—Person becoming co-owner by taking joint possession under decree

Where under a decree for joint possession a person has taken joint possession the presumption is that all formalities of law prescribed for giving joint possession were observed and he thus became a co-owner in the property thereafter. The burden therefore lies heavily on the other co-owners to show that after the passing of possession they were so notoriously exclusive in their

MAHOMED AKBAR v. SYED MAHOMED
 42 P L R J & K 283

—Co-sharers—Possession of entire property by co-sharers—Presumption of ouster

Merely possession of the entire property by a co-sharer unaccompanied by any other circumstance is not sufficient to create a presumption of ouster (*B N Rau, J*)
BHUTNATH BANDOPADHYA v. JAGAT TARINI DASI 71 C L J 200

—Co-sharers—Proof

The party who sets up the plea of adverse possession must prove that the possession was open, notorious ex-

hostile possession and ouster See 1939 Dig, Col 5
MAIKA v. TULSHA 1940 R D 36

—Essentials

Possession to be adverse must have certain definite attributes. The fundamental condition is that the possession must involve an intention to hold as owner and to the exclusion of all other persons.

—Mutation proceedings—Effect of

An order made in a mutation proceeding is not a judicial determination of title or proprietary interest and may not per se create any title. But if accompanied by overt acts of possession such an order may give rise to an adverse inference of an assertion of a hostile title (*Singaravelu Mudaliar and Venkata Rangaswamy, JJ*)
NANJAPPA SETTY v. HASSAIN BEE 45 Mys H C R 57 = 17 Mys L J 510

ADVERSE POSSESSION.

—Essentials—Mortgage—Sale by mortgagor without knowledge of mortgagee—Vendee taking possession—Possession—If adverse to mortgagee under English mortgage

Where the mortgagor has sold and handed over possession of the property to the purchaser without the knowledge of the mortgagee and the mortgagee holding

A I R 1910 Sind 195

—Essentials—Notice of hostile title to owner—Necessity—Jeroyati land in Zamindari wrongly believed to be inam but later discovered to be Jeroyati—Non-payment of rent by occupants for 12 years—If creates rent free title—Benefit of occupants of proprietary rights—Effect of See 1939 Dig, Col 6 RAMACHANDRA DEO v. BALAJI

190 I C 42 = 13 R M 358 = 1940 M W N 433 =

A I R 1940 Mad 91 = (1940) 1 M L J 673

—Present state of law—If to be brought to the notice of the owner

possession in order to be effective to the knowledge of the person to whom it is made. It is not sufficient that such possession is running against the true owner. It must be such as to put the true owner on inquiry. In *Venkata v. HASSAIN* 45 Mys L J 510 it was held that the possession of the true owner must be such as to put the true owner on inquiry.

—If interrupts adverse possession

Where another is in adverse possession of a property such as a house, the true owner cannot keep his rights in the house alive against the accrual of prescription by the fact that occasionally he goes and stays in the house as a guest for a few days. That cannot prevent the running of adverse possession (*Singaravelu Mudaliar and Venkata Rangaswamy, JJ*)
NANJAPPA SETTY v. HASSAIN BEE 45 Mys H C R 57 = 17 Mys L J 510

—Interruption—Person in possession and enjoyment of whole property without title—Acquisition of

—Landlord and tenant—Death of a tenant at will—

Suit against son for possession—Plea of adverse possession—Starting point See 1938 Dig, Col 6 ABDOU

RAZACK v. SETH NANDLAL L R (1940) Nag 269

—Landlord and tenant—Person in adverse possession—Plea of adverse possession—Starting point

—Landlord and tenant—Possession by tenant of adjacent accreted land as occupancy riyat—Annual inundation—Effect of

Possession of a limited interest in property may be just as much adverse for

quent suit for rent against him as a suit for rent by itself cannot create the relationship of landlord and tenant (*Sen, J*)
MEAH KHA v. SERAJUDDIN SAKDAR A I R 1940 Cal 65

—Landlord and tenant—Possession by tenant of adjacent accreted land as occupancy riyat—Annual inundation—Effect of

Possession of a limited interest in property may be just as much adverse for

ADVERSE POSSESSION.

"to put to rest with the consent of the landlord, he does not purport to hold the land under any instrument which

REF ID: A66043

—Possession under invalid title—Wakf invalid—
 Powers of mortgagor—Nature of

—Presumption as to Possession is *prima facie* adverse and exclusive and is presumed to be as of right until such presumption is

—Religious endowment—Possession purporting to be as mutawalli of waqf found to be invalid—If adverse

A I R 1940 A11 365

Where the land was in the possession of the tenants in order that there may be adverse possession against the rival landlords, the plaintiffs must show that they have intercepted rents payable by the tenants to the rival landlords for a period of 12 years prior to the institution of the suit (*Akathirya J.*) KALIMUDDIN MIA v. EAKUTENNESSA BIBI 190 IC 822-71 CLJ 232- AIR 1810 CAL 347.

ADVERSE POSSESSION.

—Submerged land—Constructive possession—
Principle of

AGRA PRE-EMPTION ACT (1922) S 17

Co-sharer—If can maintain

Where a M.

entire property

and it vests in

not entitled to any share or part in the mahal or village in which the property is and is therefore not entitled to maintain a suit for pre-emption—even though he might describe himself as *mutawalli*. He cannot be allowed to amend his plea in second appeal and substitute the Almighty as plaintiff (*Thom, C J and Ganga Nath, J*) BANWARI RAM v MAHOMED YAR KHAN

1940 A W R

—Ss 4 and 12—Resumed *muafar*—

Wajib ul arz—Construction—Right to pre

Where the whole scheme of the *muaf* village unmistakably indicates that a resumed is not treated on the same footing as a co-sharer his status was in no case better than that of prior without the right of having any joint lands of the mahal or in the administration of its affairs, such a person has no right of pre-emption. It

JJ) MANGAN LAL v BRAHM DUTT

ILR (1939) All 969—187 IC 147—12 RA 476—

1940 A W R (HC) 317—AIR 1940 All 88

—S 4 (1) and (7)—Co sharer—Petty proprietor

—Owners of specific plots of resumed *muaf*—When

co-sharer? See 1939 Dig Col 10 H

SHAHARYAR KHAN ILR

186 IC 838—12 RA 455—AI

—S 4 (1) and (7)—Owners of

resumed *muaf*—If 'co-sharers'—

administration of the affairs of the mahal

See 1939 Dig, Col 10 CHIRANJI L

LAL 185 IC 861

exercised

A suit for pre-emption does not lie against a vendee

who on the date of the sale sought to be pre-empted had

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AGRA PRE-EMPTION ACT (1922) S 17

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of the village in which the plot in question was

AGRA PRE-EMPTION ACT (1922), S 17.

—S 17—Actual price—Onus See 1939 Dig, Col.
12 ANANT RAI v BHAGWAN RAI 187 IO 4 =
12 RA 461 = AIR 1940 All 12

—S 19—Defendant becoming co-sharer before suit
—Decree, if could be passed.

Where before the date of a su
defendant vendee had become a
by reason of a deed of gift execut

GAM. 188 IC 386 = 12 RA 13 =
1940 A.W.R. (H.C.) 22 = 12 RA 411 = 12 RA 411

AGRA TENANCY ACT

—Portion of—Summary of
provisions of the Act

Summary of conclusions
consideration of the several

Agra Tenancy Act (1) A number of persons holding a
tenancy are co tenants (2) These co tenants are joint

abandonment or in any other way except by death, the
rights of the remaining co tenants are not affected but
they remain as joint tenants of the whole holding
(5) If one co tenant dies, his interest does not pass by
survivorship to the other co tenants whether they are
joint in estate with him or not
successors according to the order
(6) If there is no such heir, t

—S 3(4)—'Sayer'—Claim for a share in weighing

Grove means a specific piece of land having trees
planted thereon so as to preclude the area when the
trees are full grown from being used for any other pur.

AGRA TENANCY ACT (1926), S. 12.

—S 3 (15)—Grove—Nature of—Character, if
destroyed by portion becoming bereft of trees—Test to be
applied—Finding of trial Court—Interference in
appeal.

—S. 3 (15)—Grove—Test—Greater portion of

—Ss 8 and 50—Agreement as to enhancement by
more than 25 per cent—How far valid.

Where there is an agreement for enhancement by
more than 25 per cent. according to sub-CI (1) of S 8
of the Tenancy Act, the agreement is void "to that
extent" and according to sub CI (2) it is void "if and
in so far" as it purports to enhance the rent otherwise
than in accordance with the provisions of the Act
Hence the agreement is not wholly void, but is valid to
the extent of 25 per cent (Harper, S.M.) NAVIN
CHANDRA SINGH 1940 R D 444.

agreement as to ex pro

the Tenancy Act parties

—If available,

Cl (3) of S 8 of the Agra Tenancy Act gives an ex

contract between the parties is an oral one and the
tenant has not contracted himself out of his rights under
the Act the tenant does not forego the right of commu

later on (Harper, S.M. and
SINGH v SHUKURUKKAH
O R D 521 = 1940 O A. 1100 =
1940 A W R (B R) 204

and C. P. Code, S 9—Fixed
landholder—Eviction of pro

AGRA TENANCY ACT (1928) S 17

primary right—Remedy—Building of temple by tenant—If an improvement—S 109, if helps tenant

the rights of the landholder to realise the rent of the holding as and when therefore, constitute of the landholder civil or revenue Court remedy by way of a fixed rate tenant the

Act barring suits for injunction or compensation against a fixed rate tenant Where a fixed rate tenant to whom land was originally let for agricultural purposes proposes to build a temple thereon, it amounts to an act inconsistent with the purpose for which the holding was let and hence the landholder can sue the tenant for compensation or for an injunction and such a suit is neither barred by the Tenancy Act nor is it by cognizable by the Revenue Court Such a

AGRA TENANCY ACT (1928) S 23

Act, but which for some reason or other failed to convey those rights adequately Any flaw in the execution of

awarded, as damages

transaction, costs of such ejectment may be awarded as damages, irrespective of the time when they were incurred (*Harper, S M and Sathe, J W*) MANI RAM V SRI NATH SINGH 1940 E.D. 358=

1940 A.W.R. (B.R.) 169
—Ss 19 40 and 41—Statutory tenant—Tenant under deed prior to Act of 1926 conferring occupancy

upancy

Suit for partition—Effect of partition proceedings—Effect

Act a right of exists till the date of the decree by It follows that the loss of the right after the date of the decree of the immaterial Where it appeared that d filed an application in the Revenue partition and either before the institution of a suit for pre-emption or during its pendency in the trial Court the partition proceedings was drawn up and confirmed by the Collector according to S 114 of the Land Revenue Act as a result of which

(5)—Requirements—If satisfied by attestation before Gunningo

Where an occupancy tenant admits other persons as co tenants in the occupancy holding by means of an agreement which is attested attestation is not sufficient Tenancy Act because it relates which necessarily exceeds a such an agreement does no regarding registration laid dc (*Harper, S M and Sathe*) PHUL SRI 1940 E.D. 224=

—S 18 and U.F. Lat

Conversion of proceedings under

Act—If possible in revision

It is not possible in revision to convert proceedings

1940 A.W.R. (B.R.) 169
—S 20(2) Proviso (1) (b)—Proceedings if

AGRA TENANCY ACT (1926), S. 23

Where in execution of a decree against some of the occupancy tenants the holding is sold and purchased by the decree holder, one of the tenants not bound either by the decree or the execution sale, can sue to declare the sale void as being contrary to S. 23(1) of the Tenancy Act and can eject the purchaser —
passer and obtain his relief with reference to property and not only with reference to

A I R 1940 All 218

—S. 23(2)(b)—*Mortgage of occupancy rights by one co-tenant to another—Absence of entry—Inference*

Under S. 23(2)(b) one co-tenant is competent to transfer to another co-tenant his occupancy rights by

M) GAYA DIN v. BABUA

1940 R D 58=

1940 A W R (B.R.) 46

—S. 24—*Co-sharing—Possibility—Land in possession of sub-tenants when occupancy tenant died—Collateral*

sub-tenants
tenant there
the deceased

macy is a bar

It is not correct to say that illegitimacy as a bar to

AGRA TENANCY ACT (1926), S. 34

BASKARI v. JASMAL.

1940 R D 499=

1940 A W R (B.R.) 185=1940 O.A. 1006

—Ss. 24 and 35—*Widow of occupancy tenant—Unhastily of—If extinguishes her tenancy rights*

Unhastily on the part of the widow of an occupancy

—Ss. 24 and 35 (1) (a)—*Widow of occupancy tenant—Re marriage—Effect*

In the case of the widow of an occupancy tenant, her re-marriage has the same effect as the death of the occupancy holding widow and her tenancy terminates as provided in S. 35(1)(a) of the Agra Tenancy Act. The right of succession then opened as provided in S. 24 of the Act. It is open to the zamindar to recognise the

—S. 26—*Object and scope of*

The whole object of the legislature in enacting S. 26 of the Tenancy Act is to make it clear that even in the case of persons who are joint in estate, they shall be deemed to be tenants in common for the purposes of succession so far as the tenancy rights dealt with by the Agra Tenancy Act are concerned. It cannot be read in any way to mean that even in the case of persons among

Verma J) DWARKA DAS v. RAFI UDDIN

I L R (1940) All 159=188 I C 389=13 E.A. 6=

1940 A L J 310=1940 A W R (F.C.) 188=

zamindar takes no action on the re marriage, the widow remains on as an ordinary tenant until she acquires occupancy rights herself and if any one seizes the land against her he is a trespasser. It is in the option of the zamindar to determine the tenancy rights inherited from her husband. It is not in his option to determine or not the occupancy rights. (Harper, S.M. and Sathe J.M.)

—S. 32 (3)—*Sub lease—Validity—Test—Sub-lease to creditor's brother—Lessee, if protected by S. 32 (3)*

Where there is no obvious connection between the lease and the money transaction the lease must be considered to be an independent transaction and both the lessor as well as the lessee must abide by it. But

married widow if he so desires (Harper, S.M.) fixed rate tenant

AGRA TENANCY ACT (1926), S 35

AGRA TENANCY ACT (1926), S 37.

1910 R D 480 (1)
 —S 35 (1) (a)—Re marriage of widow of
 occupant tenant—Effect See AGRA TENANCY ACT,
 SS 24 AND 35 (1) (a) 1940 A W R (B E) 206
 —S 37—Applicability—Transfer of a portion of

f) GAZI v RAM
 A W R (B E) 57=
) A J J (Supp) 15,
 is—Right to—Donee
 amily in possession
 er of a joint Hindu
 after her husband's
 rs do not intervene
 reafter continues in
 gift in favour of her
 ask for a division
 Act (Mehta, J M)
 1940 R D 81=
 1940 A W R (B E) 37
 —S 37—Division of holding—Who can ask for—
 Joint grove-holders—Acquisition of muskarrars
 rights by one—If can affect the right of others to ask
 for division of holding

1940 R D 17b
 1940 A W R (H C) 248=
 —S 37—Division of holder
 Remedy of co-tenant claiming
 mortgage
 In dividing up a holding the Co
 the four corners of S 37 of the
 leaving a co tenant who claims to
 mortgagee to get his rights ascertained and an entry made
 in the papers (Mehta S M)
 1940 R D 56=
 —S 37—Division of
 affect succession

law of succession
 supersede the
 is definite, clear
 anent division
 LI ABBAS
 1940 A W R (B E) 74
 —S 37—Suit under—Maintainability—Compro-
 mist prior to Act of 1926, extending agreement as to
 shares—Binding nature
 Where prior to the Act of 1926 there was a compro-
 mise between the parties which showed that there was a

—S 37, Proviso—Division of holding—No agree

nd
 ne

—S 37 and Land Records Manu
 Division of holding—Requirements of
 Private division—Effect—Consent of landlord when
 can be presumed

—S 37—Suit under—Widow inheriting joint
 share of her husband in occupancy holding and remarry

—S 37—Suit under—Zamindar, not a party—
 Division, binding nature
 If a zamindar is not a party to a suit under S 37 of
 the Agra Tenancy Act the rights of the co tenants d

Y. D. 1940—2

AGRA TENANCY ACT (1936) S 40

not get extinguished in whatever divisions may be formed from the original holding. Though the zamindar may consent to the division and confer occupancy rights on a party in respect of the plots in possession of that party the rights of the co-tenants cannot be affected by it for the zamindar has no authority to revoke the rights of the former tenant.
(*Harper S M and Sathe J A*)
v **EBHAN ULLAH**

—Ss 40 and 41—Acquisition of land—Statutory tenant—Section applicable. See **AGRA TENANCY ACT SS 19 40 AND 41** 1940 E D 396

—S 44—Applicability—Ejectment of one co-sharer by another as a trespasser—If possible—Proper remedy—Suit under S 44—Duty of plaintiff to prove title. See 1939 Dg Col 20 **NIRMAL v SAGWA** 1940 E D 44

—S 44—Applicability—Sale of suit—Expropriatory rights neither surrendered nor relinquished—Vendee gets into possession if can be ejected under Limitation

Where on the sale of suit there has been a surrender of the expropriatory rights under

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—S 44—Auction purchase of mortgagee's rights—Dakhal dehani beyond time—Mortgagee in possession

—Ss 44 and 99—Dispossession by one of the co-sharers—Proper remedy

Where there has been a forcible dispossession by only one of several co-sharers of the patti the remedy is under S 44 and

(*Sathe J M*)
1940

—Ss 44 and 99—Mutation also effected—Remedy of the purchaser

Where a thekadar is dispossessed by a purchaser who has got his name also mutated the remedy of the thekadar is not by a suit under S 44 or S 99 of the Tenancy Act but by a suit for specific performance of the contract of sale.

His remedy
landlord
DAS BAJOP

—Ss 44 and 99—Third party interests affected—Suit under S 44. See 1939 Dg Col 20 **JAGANNATH PRASAD**

—S 44—Ejectment and possession—Restoration to possession in respect of another decree—Status of tenant. See 1939 Dg Col

AGRA TENANCY ACT (1936) S 44

21 **NANHEY v MAHOMED UNUS AHMAD** 1939 A L J (Supp) 92

—S 44—Grant of patta by mortgagor in possession—Subsequent purchase by creditor—Plea of fraudulent transfer—Test—Status of tenants. See 1939 Dg Col 21 **SUNDER LAL v SUKHDEO**

1940 E D 45

*the kaddar to sons of thekadar
If renders the lessee liable*

The mere fact that the lessees of thekadar land are the sons of the thekadar is no ground for vitiating the contract of tenancy entered into between the thekadar and his sons five years prior to the termination of the period of the thekadar and where the rent fixed is economic and the lessees cannot be ejected as trespassers after the termination of the period of the thekadar (*Harper S M and Sathe J M*) **MISAR AJODHIA NATH v ROSHAN LAL** 1940 E D 392

—S 44—Liability to ejectment—Mortgagee of

KUNDAN LAL v TULSHI RAM 1940 E D 444—
1940 A W R (B R) 147

—S 44—Limitation—Suit to get rid of person

—S 44—If mere cultivation of land as khudkasht—If confers a right to eject tenant but in by lambardar

and as his khudkasht for a does not become its land or eject under S 44 of the possession by the lambardar (*if*) **SHANKER LAL v** 1940 R D 238—
1940 A W R (B R) 154
*or remedy of ejected tenant
tenant in possession and*

recorded as tenant in chief

Where a sub tenant of a sub tenant is in possession after the expiry of the period of tenancy and the tenant in chief had been ejected under S 79 of the Tenancy

—S 44—Receipt for rent—Written consent to—Receipt for rent for period of time subsequent to the alleged re-admission—If enough to prove written consent for re-admission

Where in a suit for ejectment filed under S 44 of the

J. M. JUKHU RAM v LAL MAHADEO PRASAD SINGH 1940 E D 195—1940 A W R (B R) 70

AGRA TENANCY ACT (1926), S. 44.

—Ss 44 and 86—*Relative applicability—Vendor of sir lands, not claiming ex-proprietary rights—Status of tenants of sir—Liability to ejectment*

Where the vendor of lands does not claim ex-proprietary rights, tenants of the sir become not liable to ejectment under S. 44 and not trespassers liable under Tenancy Act (*Sathe, J M*)

—S 44—*Remedy under—*

—*Recalcitrant co sharer—Proper remedy against*

Under S. 44 of the Agra Tenancy Act a trespasser may be ejected. In the case of co sharers they are entitled to joint possession and they cannot, therefore, be ejected under S. 44. If one co-sharer is recalcitrant and takes possession of a particular plot in defiance of the wishes of the lambardar and the other co sharers, their remedy is not by way of a suit for ejectment under S. 44, but by way of partition (*Thoi*)
SULTAN AHMA
I L R (1940) A

1940 (

—S 44—*R*

ing certain lana

Where a co sharer has cultivated a certain area of land as his *khudkhar* for two years. It does not necessarily constitute the same as his severally giving him the right to act as its landholder. He is therefore not entitled to sue to eject as a trespasser under S. 44 Agra
posse
M an

lease

A lease by one of the co sharers only conferring occupancy rights is invalid and it cannot create any other tenancy. It could not confer some other rights as

—Ss 44, 86 and 192—*Sale of sir—Ex proprietary rights not claimed—Suit for ejectment of tenants under S. 44—Decree—Stay of Proceedings Act, in operation—Decree under S. 86 if could be passed after, Stay of*

AGRA TENANCY ACT (1926), S. 44.

SINGH 1940 A W R (H.C.) 452=1940 O A. 686=1940 A L J. 596—A I R 1940 All 455

—Ss. 44 and 107—*Suit against trespasser—Latter,*

1940 O A. 1107.

—S 44—*Suit under—Defences open—Onus.*

In contesting a suit under S. 44, Tenancy Act, the written statement may take one of two shapes—either the defendant will urge that he is in possession as a trespasser and it is then for the plaintiff to show that the suit is within time, or the defendant will urge that he

—S 44—*Suit under—Limitation—Starting point and period*

A suit for the ejectment of the defendant as a trespasser is due to be brought within 12 years of the date

—S 44—*Suit under—Plea in defence—Failure to prove title set up—Plea of limitation, if available thereafter.*

In a suit under S. 44 of the Agra Tenancy Act, it is always open to a defendant to plead a title and on his failure to prove that, to plead limitation (*Harper, J M*) BIJAI BHADUR v CHOORAMAN
1940 E D 192=1940 A W R (B E) 69 (2)

—S 44—*Transferee from co sharer in exclusive possession—If can be ejected.*

Where a co sharer in undivided property is in enjoyment with the other alienate to a portion which with his co-sharers no right by relief in a suit
Act. (*Bennet*)

—S. 44—*Sir holder—If a 'land holder' under S. 44.*

parent holding out of which the tenancy was carved out as a subordinate tenure, would be in a position to transfer dies with the land holder cannot enjoy as a trespasser, (*Afika,*

AGRA TENANCY ACT (1926) S 40

not get extinguished in whatever divisions may be formed from the original holding. Though the zamindar may consent to the division and confer occupancy rights on a party in respect of the plots in possession of that party, the rights of the co-tenants cannot be affected by it, for the zamindar has no authority to revoke the rights of the former tenants in the plots in question (*Harper, S M and Sathe J M*) MAHOMED KHALIL v EHSAN ULLAH 1940 B D 497=

1940 A W R (B R) 197

—Ss 40 and 41—Acquisition of land—Statutory tenant—Section applicable. See AGRA TENANCY ACT, Ss 19 40 AND 41 1940 B D 396

—S 44—Applicability—Ejectment of one co-sharer by another, as a trespasser—If possible—Proper remedy—Suit under S 44—Duty of plaintiff to See 1939 Dig Col 20 NIRMAL v SAGWA 1941

—S 44—Applicability—Sale of *sir*—Expropriatory rights neither surrendered nor relinquished—Vendee getting into possession if can be ejected under S 44—Limitation

Where on the sale of *sir* there has been neither a surrender of the expropriatory rights under S 15 (2) nor a relinquishment subsequent to the six months provided by S 15 (1) of the Tenancy Act the creation of the expropriatory rights is automatic and could be terminated only under S 35 (f) of the Act. With the creation of the expropriatory rights in the *sir*, the vendor becomes the tenant of the whole coparcenary body and

—S 44—Auction purchase of mortgagee's right—Dakhal dehani, beyond time—Mortgagee in possession—If can be sued as trespasser

Where a person purchases another's mortgagee rights at a public auction but takes *dakhal dehani* beyond the time allowed, it has not the effect of bringing about the actual dispossession of the original mortgagee. Hence the auction purchaser cannot sue the mortgagee as trespasser as there has been no dispossession (*Mehra, S M*) JAISIRI SINGH v BAJRANG SINGH 1940 A W R (B R) 60=1940 B D 164

—Ss 44 and 99—Dispossession by one of the co-sharers—Proper remedy

Where there has been a forcible dispossession by only one of under (*Sathe*)

—Ss 44, 99 and 212—Dispossession of *thekda* by purchaser—Mutation also effected—Remedy of *thekdar*

Where a *thekdar* is dispossessed by a purchaser who has got his name also mutated the remedy of the *thekdar* is not by a suit under S 44 or S 99 of the Tenancy Act for they both refer only to landholders. His remedy is under S 212 which specifically refers to a landlord (*Harper, S M*) QAIM HUSAIN v BALDEO DAS BAJORIA 1940 B D 501

—Ss 44 and 132—Distinction—Proof that no third party interests affected—Necessity for in suits under S 44. See 1939 Dig Col 22 MUKAT SINGH v JAGANNATH PRASAD 1940 B D 48 (1)

—S 44—Ejectment under S 79 and obtaining of possession—Restoration to possession in respect of another decree—Status of tenant. See 1939 Dig Col

AGRA TENANCY ACT (1926) S 44

21. NANHEY v MAHOMED UNUS AHMAD

1939 A L J. (Supp) 92

—S 44—Grant of patta by mortgagor in possession—Subsequent purchase by creditor—Plea of fraudulent transfer—Test—Status of tenants. See 1939 Dig Col 21 SUNDERIAL v SUKHDEO 1940 B D 45

—S 44—Lease of *thekda* land to sons of *thekdar*—Termination of *thekda*—If renders the lessees liable to ejectment as trespassers

The mere fact that the lessees of *thekda* land are the sons of the *thekdar* is no ground for vitiating the contract of tenancy entered into between the *thekdar* and his sons, five years prior to the termination of the period of the *thekda* and where the rent fixed is economic, and the

rs after the

Harper, S M

ROSHAN

1940 B D 392

—S 44—Liability to ejectment—Mortgagee of proprietary right taking possession

The mortgagee of proprietary rights who takes possession of any land which the mortgagor held singly or even in conjunction with others is a trespasser liable to ejectment as such (*Harper, S M and Sathe, J M*) KUNDAN LAL v TULSHI RAM 1940 B D 244=

1940 A W R (B R) 147

—S 44—Limitation—Suit to get rid of person staying on against consent of recorded tenant

Where the ejectment is not by the Zamindar then the tenant has 12 years to get rid of a person who is staying on against the consent of the recorded tenant (*Mehra, S M*) PUTTOO LAL v SARDAR SINGH 1940 A W R (B R) 63=1940 B D 211

—S 44—Mere cultivation of land as *khudkash*—If confers a right to eject tenant put in by *lambaradar*

By cultivating a plot of land as his *khudkash* for a number of years, a person does not become its landowner and as such he cannot eject under S 44 of the Tenancy Act a person put in possession by the *lambaradar* as a tenant (*Sathe J M*) SHANKER LAL v BINDA PRASAD 1940 B D 238=

1940 A W R (B R) 154

—Ss 44 and 99—Proper remedy of ejected tenant in chief—Sub tenant of sub tenant in possession and recorded as tenant in chief

Where a sub tenant of a sub tenant is in possession after the expiry of the period of tenancy and the tenant in chief had been ejected under S 79 of the Tenancy

—S 44—Re admission—Written consent to—Receipt for rent, for period of time subsequent to the alleged re admission—If enough to prove written consent for re admission

Where in a suit for ejectment filed under S 44 of the Agra Tenancy Act brought on a plea that there had been no written consent to re-admission as required by S 95 of the Act the defendant filed a receipt for arrears of rent and also a document according to which the tenant was paid a particular sum on account of the sale of a tree to the servant of the plaintiff, both having reference to a period of time three years subsequent to the alleged re admission it was held that they were no proof of a written consent to re admission (*Harper, J M*) JUKHU RAM v LAL MAHADEO PRASAD SINGH 1940 B D 195=1940 A W R (B R) 70

AGRA TENANCY ACT (1926), S. 44.

—Ss 44 and 86—*Relative applicability—Vendor of his lands, not claiming ex-proprietary rights—Status of tenants of his—Liability to ejectment.*

Where the vendor of lands does not claim ex-proprietary rights, tenants of the *his* become non-recalcitrant and are liable to ejectment under S. 44 and not trespassers liable under S. 44 of Tenancy Act (*Sathe, f M*) SAIDA BIBI v NABH 1940 R.D.C.

—S. 44—*Remedy under—Against whom avail—Recalcitrant co sharer—Proper remedy against*

Under S. 44 of the Agra Tenancy Act a trespasser may be ejected. In the case of co sharers, they are entitled to joint possession and they cannot, therefore, be ejected under S. 44. If one co-sharer is recalcitrant and takes possession of a particular plot in defiance of

Where a co sharer has cultivated a certain area of land, he is entitled to the same and is not liable to be ejected.

Agra T
possession
M and

lease

A lease by one of the co sharers only conferring occupancy rights is invalid and it cannot create any other tenancy. It could not confer some other tenants-in-chief which would confer on the right to sue under S. 44 of the Tenancy Act (*Harper, S.M.*) SHEO HARAKH v JAI S. 1940 R.D. 339=1940 A.W.R. (B.R.) 174

—Ss 44, 86 and 192—*Sale of his—Ex-proprietary rights not claimed—Suit for ejectment of tenants under S. 44—Decree—Stay of Proceedings Act, in operation—Decree under S. 86 if could be passed after, Stay of Proceedings Act, had come to an end.*

question are non-occupancy tenants such relief could not be given. (*Harper, S.M.*) SHUKLA v. RAMDHANI RAS

—S. 44—*Sir holder—S. 44.*

A *his* holder is entitled to be tenants and he is a landholder meaning of S. 44 of the Tenancy Act and Ganga N'ith, J.) RAM

AGRA TENANCY ACT (1926), S. 44.

SINGH 1940 A.W.R. (H.C.) 452=1940 O.A. 686=1940 A.L.J. 596=A.I.R. 1940 All 455

—Ss 44 and 107—*Suit against trespasser—Latter, if he is in possession as a tenant, is liable to be ejected.*

—S. 44—*Suit under—Defences open—Onus.*

In contesting a suit under S. 44, Tenancy Act, the written statement may take one of two shapes—either the defendant will urge that he is in possession as a tenant

—S. 44—*Suit under—Limitation—Starting*

ejectment of the defendant as a trespasser brought within 12 years of the date of the suit.

—S. 44—*Suit under—Plea in defence—Failure to prove title set up—Plea of limitation, if available*

Under the Agra Tenancy Act, it is necessary to plead a title and on his failure to do so, the plea of limitation will be available. (*Harper, J.*)

M) BIJAI BAHADUR v CHOORAMAN 1940 R.D. 192=1940 A.W.R. (B.R.) 69 (2).

—S. 44—*Transferee from co-sharer in exclusive possession—If can be ejected.*

Where a co sharer in undivided property is in enjoyment of a definite share by arrangement with the other

he is not liable to be ejected. If he alienates a portion which he occupies with his co-sharer, he is not entitled to relief in a suit for ejectment. (*Bennett*) J.L. WAHID 1940 R.D. 132

—S. 44—*Transferee from co-sharer in exclusive possession—If can be ejected—Status and rights of—Landlord, if can*

AGRA TENANCY ACT (1926), S 44

S M) GANGA v. RAJDEO

1940 R D 18=

1940 A W E (B R) 18

—S 44—Trespass, date of—Sub tenant, shown as chief tenant

Where in a suit under S 58 of Act II of 1901 a compromise is entered into whereby the defendant agreed to give up certain plots and converted to a decree for her ejectment from them being passed and thereafter the name of the sub tenant was entered as chief tenant, the latter's trespass against the zamindar commences only from the date of the ejectment decree and a suit for the trespasser's ejectment can be brought within 12 years from that date (*Sathe, J M*)

EBIKHAI v AZIZ BANDI BIBI 1940 R D 394=
1940 A W E (B R) 264

—Ss 44 and 99—Who can sue under

The present Tenancy Act allows a tenancy to exist where there is an implied contract to the effect that rent is payable. Hence a person who is recorded as holding the land *bila tasfa lagan* can sue under Ss 44 and 99 of the Tenancy Act. Though no rent is paid, he is liable to pay rent and hence he has acquired tenancy rights and so can sue under those sections (*Harper, S M and Sathe, J M*) SAIDA BIBI v WALI MOHAMMAD 1940 A W E (B R) 122=
1940 O A 717=1940 R D 376=
1940 A L J (Supp) 30

—S 50—Agreement as to enhancement by more than 25 per cent—Extent of validity See AGRA TENANCY ACT, SS 8 AND 50 1940 R D 444

—S 54 A—Suit for abatement of rent under—Duty of Court in enhancement of rent

It is desirable that as well as abatement disposal of suits. It to be taken into consideration in deciding a suit for enhancement or abatement of rent and the fundamental factor that would determine the rate of enhancement or abatement would be not the price factor but the fair and equitable rate of rent prevailing in periods of suffi-

to arrive at that one must take prices for a period of five years at about the time of the lease of the holding and compare it with those for a period of five years at about

—Ss 58 and 63 and C P Code, O 23 R 1 (4)—Suit for ejectment—Who can file—Suit by mortgagee in possession—Mortgagee also added as co plaintiffs—Mortgagee if can withdraw—Competency of mortgagee to continue suit alone

Tenancy Act
holder (i.e.)
A mortgagee
the tenants
situated in the share mortgaged for the mortgagee loses by his mortgage all rights of making collections. Consequently under S 63 of the Act of 1901 it is the mortgagee who has a right to file a suit for ejectment and

AGRA TENANCY ACT (1926) S 86

one or some of the several plaintiffs cannot withdraw from the suit without the consent of others it applies only to cases where all the plaintiffs have equal interest in the suit (*Sathe, J M*) MUZAFFARUDDIN AHMAD v MURTAZA HUSAIN 1940 R D 390=
1940 A W E (B R) 251

—S 58—Suit under—Compromise—Recognition of occupancy rights of defendants—Provision for enhancement—Binding nature

Where a suit under S 58 of the Agra Tenancy Act, was compromised and the zamindars admitted that the defendants were occupancy tenants, it is binding on both parties. But where the other part of the compromise provided for an enhancement, it will not be binding on the defendants as the matter is not in issue in a suit under S 58 unless it was properly registered (*Sathe, J M*) KHEDU SINGH v MAHESH 1940 R D 239=
1940 A W E (B R) 144

—S 70—Applicability—Tenant with rights of occupancy in perpetuity—No reduction of rent on account of any calamity—Status of tenant—If entitled to remission of rent

Where prior to the passing of Act III of 1926 rights of tenancy in perpetuity were conferred on a tenant and there was a clause that there would be no reduction in rent on account of any calamity such a tenant is clearly a non-occupancy tenant. Such tenants cannot get abatement of rent on account of slump in prices and would not be entitled to any remission. A reduction of rent in the case of such tenants is governed by S 70 of the Agra Tenancy Act (*Akhts S M and*

186 IC 611=12 E A 427=AIR 1940 All 44

—S 80—Ejectment—Extensions of time—Final conditional order for ejectment—Propriety

Where after several extensions the Court directs the

HAIK v HIDAYAT ULLAH KHAN

1940 A W E (B R) 93(1)=1940 R D 389(1)

—S 82(1)—If applies to fixed rate tenant See AGRA TEN ACT, SS 34(1) 82(1) AND 85(3)

1940 A L J 261

—S 85(3)—If applies to fixed rate tenant See AGRA TENANCY ACT, SS 34(1) 82(1) AND 85(3)

1940 A L J 261

—S 86—Applicability See AGRA TENANCY ACT SS 44 AND 86—RELATIVE APPLICABILITY

1940 R D 397

—S 86—Defendant's possession found to be as mortgagee—Ejectment as sub tenant—Validity See 1939 Dig Col 25 RAMESHWAR PRASAD v KHEDAN KOERI 1940 R D 71

—S 86—Person recorded as sub tenant claiming to be mortgagee—Holding of land in lieu of interest—If can be ejected as sub tenant

Where a person who is recorded as a sub tenant in the papers claims that he is a mortgagee to whom the a period of three possession. If the sub tenant and he Tenancy Act MISIRI LAL v

AGRA TENANCY ACT (1926), S 86.

KALAP NATH

1940 R.D. 122 (1) =

1940 A.W.R. (B.R.) 49

—S 86—*Suit under—Person in actual cultivation not impleaded—Dakhal dehani—Effect—Person in cultivation, if should apply under O 21, A 101*

Where in a suit under S 86 of the Agra Tenancy Act the person in actual cultivation impleaded as a party, and the formal *dakhal* is also obtained person who is in actual cultivation been made a party to the suit

for him to file an application under O 21, R 101, C P Code His possession should not be disturbed until the decree holder takes proceedings under S 44 or any other provision of law (*Harper, S M and Sathe, J M*) DHUPAN v RAM DEO DASS 1940 R.D. 482 = 1940 A.W.R. (B.R.) 218

—S 99—*Applicability—Suit for restoration of possession on the ground of illegal ejectment—No proof of fraud*

Where a suit is brought under S 99 of the Agra

Act and the plaintiff is a tenant of the defendant (*Harper, S M and Sathe, J M*) IHAKRA v IKA RAM 1940 R.D. 222 = 1940 A.W.R. (B.R.) 87

—Ss 99, 121-123—*Dispossession from land constituting severalty of the defendants—Proper remedy of plaintiff*

Where the plaintiff is dispossessed from land constituting the severalty of the defendant the plaintiff's remedy, if any lies under S 99 of the Tenancy Act and not by suit under S 121 123 On the facts it was held, that where the sale was in effect of specific *sir* plots and ex proprietary rent was fixed and collected by the vendee alone, the land constituted the severalty of the vendee (*Harper, S M and Sathe, J M*) NEHAL SINGH v HARCHAND, 1940 R.D. 447

—S 99—*Mere plea of holding through zamindar—Sufficiency*

Per *Sathe, J M*—It is not enough for a defendant merely to say that he is holding zamindar in order to make S must be something more than shadow of a title (*Harper, S M and Sathe, J M*) RAM LAGAN KURNI v NAGESA 1940 A.W.R. (B.R.) 18

—S 99—*Proper remedy of chief—Sub-tenant of subtenant* AGRA TENANCY ACT, Ss 44 AND 107 1940 R.D. 526

—S 99—*Suit under—Propriety—Ejectment—New lease—Ejected tenant restored to review—New lessee's remedy*

Where a tenant is ejected under S 81 of Act and a new lease of the holding is granted to a new tenant and he gets into possession and subsequently dispossessed by the former tenant the cancellation of the ejectment order on review, his proper remedy is by a suit under S 99 of the Tenancy Act (*Sathe, J M*) DURGA PRASAD v RAM AUTAR 1940 A.W.R. (B.R.) 165

—S 99 (1) (iii)—*Suit for compensation for improvement—If lost, where there has been neither an ejectment nor keeping out of possession*

A suit for compensation for improvement which is only a consequential relief cannot lie when the tenant has neither been ejected nor kept out of possession

AGRA TENANCY ACT (1926), S 121

(Harper, J M) BALLI BIHAR v NAKHCHED MAL

1940 R.D. 122 (2) = 1940 A.W.R. (B.R.) 51 (1)

—Ss 103 and 107—*Surrender in favour of one of the co-sharers—Legality—Responsibility for rent—When would cease*

Where the surrender is in favour of one of the co-

sharers, a tenant cannot

rent by merely

landholder takes

can he avoid it

ssion during the

years in suit If he was dispossessed against his

wishes, it is up to him to get the other person ejected

under S 44 of the Act and then formally surrender to

the whole body of landholders Till then his liability

for rent continues (*Harper S M and Sathe J M*)

MANGAL CHAND v RASOOL BUX 1940 R.D. 527

—S 107—*Abandonment—Mere letting in of sub*

tenant—If can constitute

Where a holding is an ancestral one with occupancy

status, the mere letting in of a sub-tenant could not

constitute an abandonment

(*Sathe, J M*) 1940 R.D. 528

—S 107—*Abandonment—Sub-letting when may*

amount to

The general rule is that when a portion of a holding

is sub let, the usual presumption about abandonment

from part of the holding cannot arise, but where the

area has been let out to more than one tenant and one

of these tenants who finds his position insecure takes

shelter behind the recorded occupancy tenant it is a

case of abandonment of a wholesale character to which

the general rule would not apply (*Mekhta, S M*) HARI

SHANKER LAL v BADRI SINGH, 1940 R.D. 79 = 1940 A.W.R. (B.R.) 24

—Ss 107 44 and 99—*Non payment of rent—*

One of the co-sharers if can take possession on the plea of

abandonment—Correct procedure—Effect of not follow

ing the procedure

(*Sathe, J M*) 1940 R.D. 529

—S 107 (3)—*Applicability*

In the case of a tenant who is ousted by forcible

possession by third party the period of five years limita-

tion imposed by S 107 (3) cannot apply and the period

during which he is at liberty to regain possession is

twelve years (*Sathe, J M*) BASAWAN KHAN v

SUCHIT KOERI 1940 A.W.R. (B.R.) 124 =

1940 R.D. 545 = 1940 A.L.J. (Supp.) 21

—S 121—*Suit for declaration—Maintainability*

—*Loss of possession more than 12 years prior to suit*

When a tenant is ousted by forcible possession by

third party the period of five years limitation imposed

by S 107 (3) cannot apply and the period during

which he is at liberty to regain possession is twelve

years (*Sathe, J M*) BASAWAN KHAN v SUCHIT KOERI

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—S 121—*Suit for declaration—Maintainability*

—*Loss of possession more than 12 years prior to suit*

AGRA TENANCY ACT (1926), S 121

Where a tenant prior to his suit declared an occupancy cannot obtain possession (SINGH)

—S 121—*Suit for declaration—When can lie—Persons once in possession if can sue under S 121, to regain possession*

A case for a declaration under S 121 of the Tenancy Act can lie only when brought by those who have never been in possession and may not immediately desire possession or are in possession but their rights as tenants are denied. The remedy is not open to a person who was once in possession and who is seeking to regain possession (*Harper, S M and Sathe, J M*) NEHAL SINGH v HAR CHAND 1940 B.D. 447

—S 121—*Suit under—Ancestral holding—Entry in name of one branch only—Evidence of separation—Declaration as to co-tenancy if can be made*

Where the holding was ancestral but for over 40 years and over after a settlement only one branch of the family has been shown in the revenue records, and there was evidence of separation the members of the other branches cannot obtain a declaration to the effect that they are co-tenants (*Harper, S M*) ASHRAF KHAN v SAHEB KHAN 1940 A.W.R. (B.R.) 160

—Ss 121 and 123—*Suit under—Fixed rate tenancy, purchased by member of joint Hindu family but treated as separate—Merger—Onus*

Where a fixed rate tenancy is purchased by a member of a joint Hindu family but it is treated as separate from the other properties and the entries are in favour of the son of the original purchaser sanctity must be attached to existing entries and the onus lies heavily on the recorded sub-tenant who claims a declaration that he is a tenant in chief, to show that the existing entries were wrong and that as a matter of fact the fixed rate tenancy had no legal existence and that it had determined on account of merger (*Mekta S M*) SITA AHIR v KESHOPRASAD RAI 1940 B.D. 5= 1940 A.W.R. (B.R.) 11=1940 A.L.J. (Supp.) 3

—S 121—*Suit under—Main question for consideration—Unexecuted decree for ejectment against occupancy tenant—Effect on occupancy right*

Where a suit is under S 121 of the Agra Tenancy Act, the main question to see is who is in possession

compromise is entered into between the parties, some of whom were minors fixing an enhanced rent but the necessary sanction of the Court was not obtained the

remedies open to a declaration of 121 of the for the first

a suit under S 121 as long as the tenancy lasts and the same grounds can be taken in a suit under that section to question the validity of the compromise as could be taken in

AGRA TENANCY ACT (1926) S 212

—S 121—*Suit under—Possession asserted by one party but denied by the other—Absence of issue—Remand for fresh disposal*

Where in a suit under S 121 of the Tenancy Act possession is asserted by one party and denied by the other and there had been no specific issue on the point

HUSAIN v KEDAR SINGH

1940 A.W.R. (B.R.) 132 (1)=1940 O.A. 780

—S 127—*Agreement to confer occupancy rights—Attestation before Qanungo—Sufficiency See AGRA TENANCY ACT, SS 17 (5) AND 127 1940 B.D. 224*

—Ss 132, 133 (2)—*Decree for arrears of rent—Form—Different holdings—Separate specification of amount—Necessity*

If a decree for arrears of rent in respect of different holdings does not specify separately the amount found due in respect of each, the decree would have to be set aside and the case remanded for preparation of fresh decree in accordance with S 133 (2) of the Agra Tenancy Act and for fresh proceedings under S 80 (*Harper, S M and Sathe, J M*) BUDHA v JWALA DEVI 1940 B.D. 554

—S 184—*Presumption under—Retrospective application—Refutation by continuous entry*

The presumption allowed by S 184 of the Agra Tenancy Act does not apply to rent free grants prior to the Act of 1926. Though a grant is not made as required by S 123 by a registered instrument, there may still be a presumption in favour of the grantee but that can be refuted by a continuous entry of the holder as an occupancy tenant (*Mekta, S M and Harper, J M*) RAMA DEVI v CHURA SINGH 1940 B.D. 83=1940 A.W.R. (B.R.) 29= 1940 A.L.J. (Supp.) 9

—S 189 (b)—*Khidmat tenant—Ejectment—Limitation—Starting point*

According to the provisions of S 189 (b) of the Agra Tenancy Act in the case of a *Khidmat* tenant, when does not require the years of notice to the e no longer required (*Mekta S M*) ALOPI 1940 B.D. 134= 1940 A.W.R. (B.R.) 52 arrears of profits—

provides for a period of profits in respect of o the commencement of the theka and for arrears which remain due at the expiry of the theka. A thekadar has a right to recover any arrears remaining due at the expiry of his theka, provided he brings his suit, within one year of the expiry of his theka (*Thom, C J and Ganga Nath, J*) HAR DAYAL

—S 212—*Applicability—Remedy of dispossessed thekadar against purchaser See AGRA TENANCY ACT, SS 44 99 AND 212 1940 B.D. 501*

AGRA TENANCY ACT (1926), S. 226

—Ss 226 and 229—Assignee from co-sharer of profits—Profits on account of
1939 Dg Col 34 BHAIK
KANDE GIR

—S 227—Collecting
retain his total share of prof
MAN SINGH v BAIJ NATH
I.L.R. (193

—Ss 227 and 266—Co-sharer if can collect whole rent due—Liability to be sued by others for their share
Each co-sharer is entitled to collect only his own share of the rent of a tenant and not the entire rent payable

189 I.O. 571=13 E.A. 105=1910 B.D. 207=
1940 A.W.R. (H.C.) 267=A.I.R. 1940 All 309

—S 227—Suit for profits by mortgagee of half of a patti with Sir and S 36 Land Revenue
Khadkasht continuing of the mortgage

Where the defendant the sole owner of a patti

come subject to expropriation under the provisions of

AGRA TENANCY ACT (1926), S. 265

The Board will in second appeal interfere even with findings are that the error in fact would evidence to The mere case as a real would be suffi

cient to warrant interference in second appeal Before this can be done it must be shown that the Courts below did not apply their mind to a consideration of the evidence and arrived at their findings with practically

A.I.R. 1940 All 28
—S 249—Appeal—Order of remand in a case under S 37—If appealable See AGRA TENANCY

O 47, C P Code in
The absence of reference to O 47, C P Code in S 250 of the Agra Tenancy Act in the terms in which

—S 252—Revision—Competency—Existence of

—Ss 244 249 and 3 (14)—Remand in a case under S 37—If a decree—Appellability

An order of remand passed by the Commissioner in a case filed under S 37 of the Agra Tenancy Act is not a decree within the definition of the term as given in S 3 (14) of the Act and no appeal lies from it under S 249 of the Act (See S 37) MST SUMERIA v MST UTM
1940 A.W.R. (B.E.) 237.

—S. 244—Second appeal—Interference with findings of fact by the Board—Rules as to

—S 264 and Sch II List 2 Serial 14—C P Code, O 42 R 1 (All). See 1939 Dg Col 35 RAM BIJAI PRASAD v RAM BHANJAN SINGH

I.L.R. (1939) All 766=181 I.C. 895=12 E.A. 291

—S 265—Lambardar—Right to collect rent—Limits

Under S. 265 of the Agra Tenancy Act the lambardar can collect rent only on the common land of the patti of which he is a lambardar. A usage to the contrary would prevent a lambardar from collecting rents

AGRA TENANCY ACT (1928), S 266.

the common land of the patti. There is no provision under which a usage to the contrary would allow him to land. (*Harper, RAM v PAHAR* 7 E. (B E) 151 of proprietary execute decree—

Procedure.

Where there is a transfer of the proprietary rights of some of the holders of a patti, the decree of rent after

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—S 266—Suit by one co-share

the plot in this way and had not raised any objection (*Harper, S M*) LACHMI CHAND v MISRI LAL 1940 A W R (B E) 166

—9 266—Suit by some co-sharers only—Plaintiff

sharers in such a suit This is especially so where the particular interest is being invaded by the other co-sharers (*Thom, C. J and Ganga Nath, J*) RAMPAT SINGH v. NAGESHAR SINGH

1940 A W R (H C) 452=1940 O.A. 686=1940 A L J 596=1940 A I R 1940 All 455

—S 266—Suit by some co-tenants declaration of occupancy tenancy—Main

Where some only of the co-tenants by declaration that they are occupancy tenants fail in as much as all the co-tenants in the suit (*Sathe, J M*) BHAGW SURJA

—S 266—Suit under Ss 44 and 99, by one of two recorded tenants—Material irregularity

Where a suit under Ss 44 and 99 of the Tenancy

Cl (2) of S 270 of the Agra Tenancy Act con

does not provide for the passing of any decree against the third person who may be impleaded under its pro

—S 271, Expl. 11—Question of proprietary right—Issue as to defendant co-sharer's nature of possession.

AGRA TENANCY ACT (1928), Sch. IV.

Where the only question in issue between the parties is as regards the nature of the possession of the defendant who is a co-sharer of the patti, that is to say, whether he was in possession as a tenant of the plain tiff or whether he was holding the plot as his *khudkash*, it does not, in view of Expl 11 to S. 271 of the Agra Tenancy Act, raise a question of proprietary right and hence no issue could be referred to the Civil Court (*Collister, J.*) BINDRABAN KATTAR v. GANGA RAM. 190 I C. 522=1940 A L J 573=1940 All. 445

ct applies only that he is not tary right in the land. such a plea is raised a defendant added

Appeal—Forum.

Where on a question of proprietary right being raised by the defendant the matter is referred to a Civil Court and on receipt of its finding an Assistant Collector passes

1940 R D. 11=1940 A L J 41= A I R 1940 All 197

—Sch II, Serial No 10—Suit for arrears of rent—Plea of discharge of liability by agreement—If open.

In a suit for arrears of revenue, there is nothing to

13 B A 197=1940 A W R (H C) 200=1940 R D 185=1940 A L J 372= A I R 1940 All 393

Sch IV, Group F, Serial Nos 3 or 5—Appli

ature—Test
une whether a decree falls under group F of the Sch IV of the ly question for consideration is the It included in the decree are not order for abatement, ejectment or hen the costs are only subsidiary

and the decree is not a money decree If however the

Decree declaring proper rent and the costs to be paid—Nature of decree—Limitation.

ec declared the rent payable and also nt to be paid by way of costs, the decree decree primarily and only subsidiarily a It is not a purely money decree and the period of limitation is only one year. (*Harper, S M.*) MOHABBE ALI KHAN v. CHHOTY.

1940 R D 533.

AJMER COURTS REGULATION (IX OF 1926)
(as amended in 1932) S 21—*Scope—Agent empowered by jagirdar—If a recognised agent under O 3, Rr 1 and 2 to C. P. Code*

According to S 21 of the Ajmer Courts Regulation as

AJMER LAWS REGULATION (III OF 1877), S 33—Interest—Decree for—Limits

S 33 of the Ajmer Laws Regulation lays down that interest which may be decreed by a Civil Court may not exceed the amount of the principal sum of money received by the defendants in this particular case an account was directed to be taken of sums of money and the value of the goods and so forth and it was ordered that in the equivalent sum to this sum be added and decreed (*Davies*)
* AMAR SINGH

AJMER MUNICIPAL REC

Prosecution for nuisance—Dis civil suit—Propriety

Where a criminal case of nuisance accused under the Ajmer Municipal Act is illegal and irregular for a Magistrate's application only by the accused civil suit in connection with the accused succeeds in the civil suit, he will still be open to the charge of nuisance (*Davies*) MOHAMMED BUX
v DR M L TALWAR 1940 A M L J 53

—Public nuisance—Nature of offence—Acquittal on one occasion—If bars second prosecution

A nuisance is a continuing offence So long as it

ARBITRATION AND AWARD

Where the parties to a proceeding enter into an agreement to be bound by whatever statement is made by a certain third person in relation to their disputes, they

Where an agreement has provided that if any party shall refuse or neglect to appoint an arbitrator within certain days after one party shall have appointed an arbitrator and served a written notice upon the other party requiring him to appoint an arbitrator, then upon such failure the party making the request may appoint another arbitrator to act on behalf of the party so

of one party in the presence of the other parties, it cannot be said that the examination of one party by the arbitrator in the absence of the others amounts to misconduct which will vitiate his award (*Horswell, J*) RAMA KOTESWARA RAO v SURYANARAYANA

1940 M W N 808=52 L W 373=
A I R 1940 Mad 905=(1940) 2 M L J 356

EMPEROR v BIBBOJAN 1940 A M L J 50

ALLUVION AND DILUVION

See also **BENGAL ALLUVION AND DILUVION REGULATION**

—Dhordora—What is meant by See 1939 Dig. Col 37 PASHPAT PRATAP SINGH v FDAI BHAN PRATAP SINGH 14 Luck 783

APPEAL See PRACTICE

ARBITRATION

See also (1) ARBITRATION ACT

(2) C P CODE SCHEDULE II

ARBITRATION AND AWARD—Abatement—Reference of family disputes to arbitration—Death of

expiry of the period (*Weston, J*) LOUIS DREYFUS & CO v HEMANDAS HOTCHAND 187 I C 262=

12 R S 221=A I R 1940 Sind 37

—Arbitrator—Powers of—Amendment—Entire suit referred—Amendment of plaint to correct mistake in date—Power to allow—Previous refusal of amendment by Court—Effect of See 1939 Dig Col 37 TEJPAL MARWARI v KEDAR NATH HIMAT SINGHA

6 B E 144=185 I C 273=12 E P 336

—Arbitrator powers of—Death of one of parties before decision—Power of arbitrator to continue proceedings

The arbitrators have jurisdiction to continue the arbitration proceedings although one of the parties dies of the terms of the agreement between the parties, the arbitrators

statement of referee—Parties, if can settle

Y. D 1940-3

ARBITRATION.

have no authority to go on, although a son of the deceased files an application on behalf of himself and on behalf of his minor brothers to the effect that the arbitration proceedings should continue. (*Henderson, J*)
ABINASH CHANDRA v PARASHURAM 44 C.W.N. 866.

ARBITRATION—Arbitrator's power.

An arbitrator is not bound by procedure which the Court must record separate findings on the various points at issue, or with

ARBITRATION.

in the award which takes any particular easement out of the general law and assigns a particular right in any party to that easement. (*Dalip Singh, J*) **MOHAMMAD MUSTAFA KHAN v. MOHAMMAD YAR.**

188 I.C. 477 = 12 B.L. 529 = A.I.R. 1940 Lab. 24.

—Clause in contract—Submission to—Proof—

—Award—Order passing decree
 revisable See C.P. CODE, S. 11
 1940 O.A. 748 = 1

—Award—Validity of—Arbitrator's
 public enquiry—Award, if situated

—Award—Validity—Award not signed by dis-

Where on the death of a Hindu, disputes arose between his collaterals on the one side and his widow, a

opinion between
 umpire—Decree
 viding for such
 PARA. 4.
 42 P.L.R. 124.
 r acting on be
 ter.

1940 O.A. 666 = A.I.R. 1940 P.C. 181 (P.C.).

respect to particular easements.

Where joint property belonging to certain persons has been partitioned by an award made without the intervention of the Court, the mere fact that no specific directions were been given by the arbitrators about the ventilators and drains existing in the property partitioned does not render the award voidable on the ground of difficulty in execution of the award. It is open to the parties to the award to set it aside if they can show that it is not for themselves what would be derived from the award with regard to the ordinary rules of law relating to easements in a joint property divided between two owners will apply unless there is something

award

An arbitration to which a minor is a party is not in itself void, it is only voidable at the instance of the minor. And when the minor supports it, it is not open to the other party who is a major, to have the award

suit by

In a suit for a declaration that the plaintiff is the mutwalli of a mosque, reference to arbitration is not

ARBITRATION

illegal and the decree passed in accordance with the award is not invalid (*Ride J*) FAZAL RAHMAN v. ZAINAB BIRI 189 I C 812=13 R L 116= A I R 1910 Lah 123

—“Umpire”—Meaning of

The ordinary meaning of the word ‘umpire’ is a person who is to decide upon disagreement. (*Weston J*) LOUIS DREYFUS & CO v. HEMANDAS HOTCHAND. 187 I C 262=12 R S 224=A I R 1910 Sind 37

—Umpire—Failure to appoint—If fatal

In a case where the arbitrators became estopped from appointing an umpire upon the ground that the arbitrators were not appointed, the award was valid. (*Weston J*) LOUIS DREYFUS & CO v. HEMANDAS HOTCHAND.

ARBITRATION ACT (IX)

instituted in Amritsar—Application of Arbitration Amendment Act, S 2

By reason of the notification issued under the Arbitration Amendment Act, the Arbitration Act to Amritsar was not applied.

ARBITRATION ACT (1899), S 19

ings.” Where therefore, the award is against a minor, it is incumbent to make a prayer in the application for the appointment of a proper guardian for such minor under O 32, R 3, C P. Code. If a proper guardian is not appointed, a decree passed against the minor on the basis of the award is a nullity (*Abdul Rashid, J*) ARURA v. PUNJAB ZAMINDARA BANK, LTD 189 I C 254=13 R L 71=42 P L R. 114=A I R 1910 Lah 164.

—S 11 (2)—Award filed in wrong Court—Proper order.

—S 1 (2)—Reference to arbitration by company where to be filed See COMPANIES ACT, 44 C.W.N. 285.

19—Application for stay—Discretion of court.

COMPANIES ACT, S 152 (3)

—S 4—“Submission”—Rules of Merchants’ Association

44 C.W.N. 285

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in making any difficulties in making the process of arbitration out.

se merchants, one to be named by each party. If, that by using the word “cancellation”, the defendant meant no more than that they had been relieved of their liability to deliver the goods owing to the events which had happened and that they did not mean that the contract had come to an end for all purposes.

ARBITRATION ACT (1899) S 19
is always on the plaintiff to show why he should not be
L

—S 19—Right to invoke Act—Onus of proof

of existence of contract or submission
—Necessity—Duty of applicant for
of contract or submission—If justifi-
stay

S 19 of the Arbitration Act is in t
a summary procedure and does not normally
include any lengthy or protracted inquiry or in-
vestigation. The Arbitration Act requires a
submission in writing, and the fact that a con-
tract or submission in writing exists has to be
that a

the other party does not amount to a submission
in writing as required
(Kama, J) SHRIRAM
& Co I L R (1940) F
12 P B

—S 19—Stay of suit—Award declared nullity—
Arbitration proceedings—If can continue

Any proceedings taken after the institution of a suit
on a reference made prior to the institution of the suit
are no doubt null and void but a suit can still be
stayed and the parties cannot be compelled to waive
their right to move the private tribunal upon which they
the contract was entered into

—S 19—Stay of suit ordered on misrepresentation
—Recusal of suit—Inherent power of Court

An order staying the suit if made on a fraudulent
misrepresentation can be reversed by
the order, if it is satisfied of the fraud-
stention of the other side and the suit ca-
stances be revived. Similarly the Co

ARMS ACT (1878), S 29
Rel on (Stamp, J) UDHAM SINGH v EMPEROR.
A I R 1940 Lah 468

—Ss 19 and 20—Relative applicability—Scope of
S 20

It is difficult to lay down any general rule as to what
cases fall under S 20 and what cases under S 19, Arms
of arms
is con-
immuni-
ot of the
it must be presumed that
as not only to conceal
ostel but also from any
to come to the hostel
under S 20 of the Act

—S 19 (f)—Offence under—What constitutes
The offence under S 19 (f) of the Arms Act is con-

controlling the
ward in a
r control
into the
AHMAN

EMPEROR 190 I C 180-1910 A W L R (C) 145=
1940 A Cr O 126-1940 A L J 467=
A I R 1940 All 419

—S 19 (f)—Servant of licensee carrying latter's
gun to his house under his orders—Conviction of—
Sustainability

A servant of a gun licensee who is merely carrying
the gun of his master to the latter's house under his
orders cannot be held liable to conviction under S 19
(f) Arms Act (Lakshmana Rao, J) VEERASWAMI
v EMPEROR 187 I C 120=12 R M 699=
41 Cr L J 400=1939 M W N 1260=
A I R 1940 Mad 257

—S 20—Scope and applicability See ARMS ACT
SS 19 AND 20 1940 O A 421,

—S 20—Scope of—Trial under S 19 F by City
Magistrate who was also Additional District Magistrate
empowered with powers of District Magistrate—San-

on Act
'TUKAM Even in such a case trial without sanction under S 29 is
illegal. Sanction under S 29 can only be granted on a

It is always the purpose for which an implement is the sanction in that capacity the case cannot be tried by

ASSAM DEBT CONCILIATION ACT (X OF 1936) Ss 7, 8 and 16—*Decision by Board that debt is time-barred—Effect of—Power of Civil Court to deal with such debt*

A decision by a Debt Conciliation Board that a particular debt covered by a decree is not subsisting as it is barred by limitation amounts to a decision that the board has no jurisdiction to deal with such debt. The Civil Court would be competent to deal with any application for the execution of the decree which might thereafter be filed in such Court and to decide for itself in those proceedings whether the debt was in effect time barred. (*Edgley J*) **PULIN BHARI v REASAT ALI** I.L.R. (1940) 2 Cal 277=44 C.W.N. 774

—S 8(3)—*Decision of Board—Finality—Extent*
Under S 8(3) of the Act the Board's decision on the question of jurisdiction would be final. Finality only attaches to the order in so far as it purports to decide that the Board has no jurisdiction to deal with the matter but in so far as the order purports to decide whether the alleged debt is in existence or its amount no finality will attach thereto so as to oust the jurisdiction of the Civil Court. (*Edgley J*) **PULIN BHARI v REASAT ALI** I.L.R. (1940) 2 Cal 277=44 C.W.N. 774

—S 21(1)—*Order of Board that particular debt included in application is time barred—Application continuing to be pending before Board—Civil Court, if obliged to suspend proceedings relating to such debt*

An order of the Board that a particular debt covered

BANKER AND CUSTOMER

I.L.R. (1940) 1 Cal 138=186 I.C. 636=
12 R.C. 503=70 C.L.J. 451=44 C.W.N. 122=
A.I.R. 1940 Cal 77

—S 72—*Sale statement—Lumping arrears for earlier kist with arrears for later kist—If an irregularity*

The lumping of the arrears for an earlier kist with the arrears for the later kist in the sale statement does not constitute an irregularity. (*Mitter and Akram JJ*) **ABDUL JABBAR v JITENDRA KUMAR PAL**

I.L.R. (1940) 1 Cal 138=186 I.C. 636=
12 R.C. 503=70 C.L.J. 451=44 C.W.N. 122=
A.I.R. 1940 Cal 77

—Ss 77 and 82—*Deposit of earnest money five hours after sale—Irregularity—Sale, if liable to be set aside*

The deposit of the earnest money five hours after the sale takes place is no doubt not in strict accordance with S 77 of the Assam Land and Revenue Regulation. But if there is no evidence that the neglect of this provision has resulted in substantial injury the sale is not liable to be set aside. (*Mitter and Akram JJ*) **ABDUL JABBAR v JITENDRA KUMAR PAL**

I.L.R. (1940) 1 Cal 138=186 I.C. 636=
12 R.C. 503=70 C.L.J. 451=44 C.W.N. 122=
A.I.R. 1940 Cal 77

LATION (I OF 1886), Ss. 70 (2) and 76—Separate account in arrear—Sale of entire estate—Power of Deputy Commissioner—Separate accounts—If must be advertised and put up to sale separately again for next kist

On the opening of a separate account under S 65 of the Assam Land and Revenue Regulation the liability of all the proprietors still continues to be joint and several. But the separate account

to sale but after giving an opportunity to the other proprietors to pay up the same within 10 days. As soon as the above-mentioned circumstances combine with the non payment of the arrears in terms of S 76, the Deputy Commissioner is empowered to put up the entire estate to sale and he cannot again be required to advertise for sale the separate accounts separately and to put them up separately for the default of the next kist. The entire estate can, however, be put up to sale, if and only if on merging the accounts of the separate accounts into one account, an arrear appears. The net balance has to be struck up to the kist date for which he intends to put it up for sale. He has jurisdiction to include the arrears of the next kist if the advertisement is for the sale of that kist also. (*Mitter and Akram JJ*) **ABDUL JABBAR v JITENDRA KUMAR PAL**

under Art 12 (c) of the Limitation Act the period of limitation to set aside a revenue sale is only one year from the date of the confirmation of the sale. (*Mitter and Akram JJ*) **ABDUL JABBAR v JITENDRA KUMAR PAL**

I.L.R. (1940) 1 Cal 138=186 I.C. 636=
12 R.C. 503=70 C.L.J. 451=44 C.W.N. 122=
A.I.R. 1940 Cal 77

ASSAM LOCAL SELF GOVERNMENT ACT, 1926 S 93 A—*Realization of dues by Board—Remedy by suit—Availability* See 1939 Col 40 **RAGHUBIR SINGH v TEZPUR LOCAL BOARD** 187 I.C. 593=12 R.C. 595

ATTACHMENT See EXECUTION

—Effect—If creates right or interest in land attached See REGISTRATION ACT S 17(2) (ii) 42 Bom.L.R. 1016

—Effect—If creates an equitable or judicial lien See 1939 D.G., Col 40 **LAXMINARAYAN v GHASI RAM** 189 I.C. 161=13 R.M. 26

BANKER AND CUSTOMER—Cheques delivered by customer to Bank for collection—Bank realising amounts after suspending payment—Liquidation of Bank—Right of customer to preferential payment—Draft purchased by customer drawn on branch for cash—Right to preferential payment See 1939 D.G. Col 41 **ALL INDIA SPINNERS ASSOCIATION v TAMIL NADU BRANCH OF OFFICIAL LIQUIDATOR** 186 I.C. 773=12 R.M. 668=51 L.W. 111=A.I.R. 1940 Mad 101
—Deposit of amount in Bank by way of fixed deposit as security for overdraft and for opening draft accounts—Nature of transaction—Deposit

BANKER AND CUSTOMER.

trust money—Right to preferential payment in winding up proceedings See 1939 Dig Col 41 **NAYAR MODERN BANK LTD v OFFICIAL RECEIVER, T N & Q BANK LTD** 189 IC 583=13 R.M. 338= A I R 1940 Mad 149

—Money paid by customer for transmission to another—Bank suspending payment and going into liquidation—Right to preferential payment See 1939 Dig Col 42 **NEW FIELD CO v OFFICIAL LIQUIDATORS** 189 IC 801=13 R.M. 328= 51 L W 107=A I R 1940 Mad 139

—Person having individual account and joint account—Amount in joint account solely belonging to him—Right to set-off against debt due on individual account in winding-up proceedings See **COMPANIES ACT, S 219** (1940) 1 M L J. 115

—Relationship—Customer directing deposit in particular manner when oc Effect of—Trust—If created—Bank going into liquidation—Claim by customer to preferential Sustainability See 1939 Dig, Col 42. **AMMAL v OFFICIAL RECEIVER, T. N. & Q BANK LTD** 50 L W 939=A I R 1940 Mad 98.

—Relationship—Fiduciary capacity—When arises —Money paid by party for the purchase of effective specific transaction and credited in If held in trust—Insolvency of Bank ential payment

Defendants 1 to 7 were members family carrying on business at Trist name of a banking firm which susp 30th April, 1935 The plaintiff had chase certain lands in Tuticorin and the third defendant suggested to the plaintiff that the transaction could be arranged through their branch office at that place. The

paid the amounts under an arrangement that the defendant should have the amounts in trust

and Kunkh Raman, JJ) **OFFICIAL ASSIGNEE OF MADRAS v NATESAN PILLAI.**

I L R (1940) Mad 845=1940 M W N 598= 1940 Com. C 66=61 L W 144= A I R 1940 Mad 441=(1940) 1 M L J 254

—Relationship—Trust—Deposit of bank's employees' cash security with scheduled bank—Position of latter—If trustee—Liquidation—Claim to priority over other debts of depositor bank—Sustainability See **COMPANIES ACT, S 282-B(1)** (1940) 2 M L J. 559.

BAR COUNCILS ACT (1926), S 15.

—Relationship—Trustee depositing trust moneys in Bank—Bank aware of moneys being trust moneys—Effect—If makes Bank a trustee—Company depositing employee's cash security fund in Bank earmarked as such—Bank—If trustee for company's employees. See 1939 Dig, Col. 42 **NAYAR MODERN BANK LTD v OFFICIAL RECEIVER, T. N. & Q BANK, LTD** 189 IC 821=13 R.M. 31=50 L W. 944= A I R. 1940 Mad 178.

—Set-off in liquidation proceedings—Joint and separate debt—Principle—Individual overdraft account and joint fixed deposit account—Claims in respect of, when can be set-off.

Where there is an amount payable by A in his individual account and an account payable to A and B in their joint account, the two accounts cannot be set-off.

respect of a fixed deposit transaction, it was held, that the latter sum could be set off against the former, when it was shown that the sum due in respect of the

—Suit by fixed depositor for repayment—Forum, A fixed depositor cannot bring a suit for repayment from a Bank in any place where he may happen to be the place where the (C.M.A. JJ) **ALLAH**

C 231=13 R.A. 81= 12=1940 A L J. 94= A I R 1940 All 243

An advocate who has once been convicted by a party

onal misconduct—Findings of Bar by Court See 1939 Dig Col.

—S 10(1)—Professional misconduct—Agreement with client to receive payment in event of success only —Propriety See 1939 Dig, Col 43. **R. ANADVO GATE, In the matter of** I L R (1940) Mad 17= 41 Cr L J 83

—S 15—Rules framed under—Rule prohibiting trade or business—Investments by way of money—

BENAMI.

lending—If amounts to engagement in money lending business. *See* 1939 Dig Col 43 AN ADVOCATE OF RANIKHET *In the matter of*

I L R (1940) All 60=41 Cr L J 211=

12 R A 367=1940 A Cr O 10=

185 I C 611=A I R 1940 All 1 (F.B.)

BENAMI—Benamidar—Position of *See* U P ENC EST ACT SS, 9 AND 10—BENAMIDAR

1940 A L J. 823

—Burden of proof—Test to determine character of

on the plaintiff A person cannot be deprived of property upon mere conjecture or surmise The decision must rest not upon suspicion but upon legal ground established by the test money In the

A L R 1940 Hind 173

—Decree against benamidar—Real owner—If bound

A decree obtained against the benamidar will bind the beneficial owner. (Dhale, J) *INDER-PRATAP RAJADHAR SANY V SURAT NARAIN*

BENG AGRI DEBTORS' ACT (1936), S 8

Public Gambling Act (II of 1867)

Regulation (XLIX of 1793)

Regulation (XLIII of 1793)

Revenue Free Lands Regulation (VIII of 1800)

Revenue Sales Law (II of 1859) *See* LAND

REV. SALES ACT

Sanitary Drainage Act (VIII of 1895)

Tenancy Act (VIII of 1885)

Village Chowkidari Act (VI of 1870)

Village Self Government Act (V of 1919)

DEBTORS' ACT

Debt—Plain

withdrawn from

debt—Execu

amount stayed

on notice from Board—Execution against surety—Permissibility

Where the amount due under a decree passed against

—Ss 2 (8) (iii) and 31—Money decree for share of bhag produce—If debt—Execution of such decree—If can be stayed by notice.

A money decree against a *bhagdar* representing the price of the share of the produce due from him is not a

BENGAL ACTS.

Agricultural Debtors' Act (VII of 1936)

Alluvion and Diluvion Regulation (XI of 1825)

Cess Act (IX of 1880).

Court of Wards Act (IX of 1879).

Cruelty to Animals Act (I of 1920)

Embankment Act (II of 1882)

Estates Partition Act (V of 1897)

Excise Act (V of 1909).

Food Adulteration Act (VI of 1919).

CHARAN 41 CWN. 1045—A L R 1940 Cal 549

—S 2 (9)—Adhiars, bargadars and bhagdars—If debtors

The reference in S. 2 (9) (b) of the Bengal Agricultural Debtors' Act to a person "who cultivates land himself" must mean a person other than a *raiyat* or an under *raiyat* who has some interest in the land, which would entitle him to employ hired labourers, *adhiars*, *bargadars*, or *bhagdars* for the purpose of cultivating it, but such hired labourers and the other persons mentioned would not themselves be included within the

BANKER AND CUSTOMER.

trust money—Right to preferential payment in winding up proceedings. See 1939 Dig Col. 41. **NAVARR MODERN BANK LTD v. OFFICIAL RECEIVER, T. N. & Q. BANK, LTD** 188 I.C. 583=13 B.M. 338=

AIR 1940 M-1 140

—Money paid by customer for transmission—Bank suspending payment and going into liquidation—Right to preferential payment Dig. Col. 42. **NEW FIELD CO. v. OFFICIAL LIQUIDATORS** 189 I.C. 801=13 B.M. 328=

51 L.W. 107=AIR 1940 Mad 139

—Person having individual account and joint account—Amount in joint account—Right to set-off against debt account in winding-up proceedings ACT. S 229 (194 1 11 11

—Relationship—Customer directing Bank to apply deposit in particular manner when of effect of—Trust—If created—Bank going into liquidation—Claim by customer to preferential payment See 1939 Dig. Col. 42. **ANIMAL v. OFFICIAL RECEIVER, T. N. & Q. BANK, LTD** 50 L.W. 939=AIR

—Relationship—Fiduciary capacity—When arises—Money paid by party for the purpose of effecting specific transaction and credited in account—If held in trust—Insolvency of Bank—Right to set-off

Defendants 1 to 7 were members of a family carrying on business at the name of a banking firm which suspended business on 30th April, 1935. The plaintiff had deposited certain funds in the

paid the amounts under an arrangement that the defendants should keep the amounts in trust for the plaintiff.

and Kunkh Raman, JJ) OFFICIAL ASSIGNEE OF

employees' cash security with scheduled bank—Position of latter—If trustee—Liquidation—Claim to priority over other debts of depositor bank—Sustainability See COMPANIES ACT, S 282 B(1)

(1940) 2 M.L.J. 559.

BAR COUNCILS ACT (1926). S 15.

—Relationship—Trustee depositing trust money in Bank—Bank aware of money being trust money—Effect—If makes Bank a trustee—Company depositing employee's cash security fund in Bank earmarked as such—Employees. See BANK LTD v. K. LTD

50 L.W. 944=

AIR 1940 Mad 178

—Set-off in liquidation proceedings—Joint and separate debt—Principle—Individual overdraft account and joint fixed deposit account—Claims in respect of,

by A in his individual account to A and B in which cannot be set-off. But if it could be shown that, though the account is in

when it was shown that the sum due in respect of the

repayment—Forum. If a suit for repayment is brought, it may happen to be in the place where the court sits. (1940) ALLAHABAD

C 231=13 B.A. 81=

12=1940 A.L.J. 94=

AIR 1940 All 243

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An advocate who has once been called upon by a party

personal misconduct—Findings of Bar Council by Court. See 1939 Dig Col.

—S 10(1)—Professional misconduct—Agreement with client to receive payment in event of success only—Propriety. See 1939 Dig, Col. 43. **R. AN ADVOCATE, In the matter of** I.L.R. (1940) Mad 17=

41 Or L.J. 83
—S 15—Rules framed under—Rule prohibiting trade or business—Investments by way of money-

BENAMI

lending—If amounts to payment in money lending business. See 1939 ILR Cal 43. AN ADVOCATE OF LAWYER. In the matter of

1 L.R. (1910) AH 60-41 Cr L.J. 211-
12 RA 267-1910 A Cr O 10-
195 IC 611-AIR 1910 AH 1 (T.B.)

BENAMI—Benami Act—Enactment of. See P.F.C. 1st Act No. 9 and 10—Benamidar

1940 A.L.J. 823

—Burden of proof—Test to determine character of transaction—It is necessary to be considered—Doctrine of advancement. Applicable in India

There is in Indian presumption in favour of the advancement of wife or of children property purchased by the husband or father in their name. In a suit for a declaration that a transaction is benami, the burden lies on the plaintiff. A person cannot be deprived of property upon mere conjecture or surmise. The decision must rest not upon suspicion but upon legal grounds established by legal testimony. In the absence of other relevant circumstances, the criterion of advancement is the source from which the purchase money comes, but in determining whether a transaction is benami or not, all relevant factors must be taken into consideration, the surrounding circumstances, the position of the parties and their relation to one another, the motives governing their actions and their subsequent conduct. Less evidence is required in India than in England to prove that a transaction is benami. The transaction must be shown to be a bogus or sham transaction on, though a slight quantity will suffice to show it. (Datta, J.C. and Wadon, J.) SARIHAGIBAI v. FIRKASH CHAND 1 L.R. (1940) Kar 334-A L.R. 1940 Sind 173

—Decree against benamidar—Real owner—If bound

A decree obtained against the benamidar will bind the beneficial owner (Dhale, J.) INDERJIT PRATAP BAHADUR SAHNI v. SURAJ NARAIN 190 IC 787-AIR 1940 Pat 21.

—Mahr—Benami purchase of property

BENGAL ACTS

- Agricultural Debtors Act (VII of 1936)
- Alluvion and Diluvion Regulation (XI of 1825)
- Cess Act (IX of 1880)
- Court of Wards Act (IX of 1879)
- Cruelty to Animals Act (I of 1920)

BENG AGRI DEBTORS ACT (1936), S 8

- Public Gambling Act (II of 1867)
- Regulation (XIX of 1793)
- Regulation (XLIII of 1793)
- Revenue Free Lands Regulation (VIII of 1900)
- Revenue Sales Law (II of 1859) See LAND REV SALES ACT
- Sanitary Drainage Act (VIII of 1895)
- Tenancy Act (VIII of 1885)
- Village Chowkidari Act (VI of 1870)
- Village Self Government Act (V of 1919)
- Wakf Act (XIII of 1931).

BENGAL AGRICULTURAL DEBTORS ACT (VII OF 1936) Ss 2(8) and 34—"Debt"—Plain

Gift's liability to repay decretal amount withdrawn from Court on reversal of decree in appeal—If debt—Execution by defendant against him for that amount stayed on notice from Board—Execution against surety—Permissibility

Where the amount due under a decree passed against the plaintiff to repay the money is a 'debt' within the meaning of the Bengal Agricultural Debtors' Act. If the plaintiff applies to a Debt Settlement Board on notice from it the execution proceedings taken out by the defendant against him for the money are stayed the defendant can start execution against the surety (Henderson, J.) GOPENDRA NARAIN DHAR v. RADHA KRISHNA DHAR. 188 LO 389-12 R O 671-44 C.W.N. 393-A.L.R. 1940 Cal 224

the liability of the plaintiff to repay the money is a 'debt' within the meaning of the Bengal Agricultural Debtors' Act. If the plaintiff applies to a Debt Settlement Board on notice from it the execution proceedings taken out by the defendant against him for the money are stayed the defendant can start execution against the surety (Henderson, J.) GOPENDRA NARAIN DHAR v. RADHA KRISHNA DHAR. 188 LO 389-12 R O 671-44 C.W.N. 393-A.L.R. 1940 Cal 224

—Ss. 2 (8) (iii) and 34—Money decree for share of bhag produce—If debt—Execution of such decree—If can be stayed by notice

A money decree against a *Magdar* representing the price of the share of the produce due from him is not a debt within the meaning of S 2 (8) of the Bengal Agricultural Debtors' Act, as this cash liability is really a share of the produce of the land expressly made in S 2 (8) (iii) of that decree cannot, there

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debtors

The reference in S 2 (9) (b) of the Bengal Agricultural Debtors' Act to a person who cultivates land himself must mean a person other than a raiyat or an under raiyat who has some interest in the land, which

BENG. AGRI. DEBTORS' ACT (1936) S 27

—Ss 27 (1) and 25 (1) (e)—Award converting usufructuary into simple mortgage—jurisdiction of Board

fixed in the award must obviously be regarded as a charge on the mortgaged property until the conditions of the settlement have been fulfilled but, subject to the provisions of this section the Board has full authority to modify the terms of the original mortgage upon which the loan had been advanced. The Board will not, therefore, act without jurisdiction in making an award the effect of which is merely to convert a usufruct-

FAZLUR RAHMAN SARKAR v. ATAL BEHARY GHOSH
I.L.R. (1940) 2 Cal 203

—S 33—Suit for ejectment under S 48 C of the Bengal Tenancy Act—If in respect of debt constituted by arrears of rent

A suit for ejectment under S 48 C of the Bengal Tenancy Act in which there is no claim for arrears of rent, is not a suit in respect of arrears of rent therefore, not a suit in respect of a debt within the meaning of S 33 of the Bengal Agricultural Act. Such a suit is, therefore, not barred although arrears of rent have been included by the plaintiff's application to a Debt Settlement Board.

J. MYMER SINGH LOAN OFFICE LTD. v. SHEIKH
A.I.R. 1940 Cal 523=44 C.W.N. 384

—S 34—Applicability—Decree of High Court transferred to Munsif for execution—Notice to Munsif for stay—Legality. See 1939 Dig. Col. 46. **TARAK NATH KUNDU v. PANCHANON DUTT**
185 I.C. 131=12 E.C. 338

—S 31—"Civil Court"—If includes High Court

on notice from Board—Execution against surety—Permissibility. See **BENGAL AGRICULTURAL DEBTORS' ACT, SS 2 (8) AND 34**
44 C.W.N. 393

—Ss 34 and 35—Failure of Board to issue notice—Execution sale—Validity of—Settling aside of sale—

ferred upon him by the Act by reason of some care

BENG. AGRI. DEBTORS' ACT (1936), S 34

the debt had been extinguished by the sale, it would revive after the sale had been set aside and the provisions of the Act would apply.

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! :—Notice for stay—Application for setting aside sale—Compromise between judgment debtor and purchaser that sale should be set aside on payment by judgment-debtor—Judgment debtor thereafter obtaining stay order—Court if bound to stay proceedings.

On an application filed in Court for setting aside an execution sale under O 21, R 90, C. P. Code, a compromise was effected between the judgment debtor and the purchaser. It was agreed that if the judgment-debtor paid the purchaser a certain sum the sale should be set aside. Instead of paying, the judgment-debtor obtained a stay order from a Debt Settlement

the Court was not bound to stay the proceedings (*Henderson, J.*) **KRISHNA GOBINDA v. SALAMATULLA**
44 C.W.N. 789

—S 31—Notice for stay of execution—Validity—Notice omitting one decree holder and adding stranger as judgment debtor

A notice under S 34 of the Bengal Agricultural Debtors' Act issued in the prescribed form giving which is to be omission or by the judgment-debtor

—S 34—Notice under—Suit for foreclosure of mortgage by conditional sale—If must be stayed. See 1939 Dig. Col. 48. **ABDUL LATIF v. ABDUL GANI SERANG**
I.L.R. (1940) 1 Cal 133=185 I.C. 393=12 E.C. 358

—S 34—Order staying or refusing to stay execution—Appeal. See C. P. CODE, S 47—APPEAL.
44 C.W.N. 384

stayed and time granted for—Notice received by Court from Board—Time for which Court fee—If should be stayed. See 1939 Dig. Col. 49. **NATHUMULL BHUDU RIA v. GOLAN JABBAR**
I.L.R. (1940) 1 Cal 10=188 I.C. 623=12 E.C. 9=A.I.R. 1940 Cal 273

—S 34—"Proceeding in relation to debt"—Appeal—Notice could be

whether proceedce under s issued and an appeal there pro of the existent *Chharia*

and *Akram JJ*) **DULICHAND v. RAJANI KANTA**
44 C.W.N. 900

BENGAL AGRICULTURAL DEBTORS' ACT (1935) S 35

permission to sell the land claim for rent and damages with a view to being a fresh suit on the same cause of action. The Court directed the plaintiff to be put up for orders after the 23rd order was varied.

Held, that in the absence of provision on form Court, the claim for rent and damages should be treated as withdrawn, and the Court should proceed with the trial of the statement only. (*Henderson, J*) FIFTEEN HUNDRED EIGHTY TWO HUNDRED HUNDRED

41 CWN 733.

—S 35—*Applicability—Application filed before Board after execution case is started.*

Per Bhattacharya, J—S 35 of the Bengal Agricultural Debtors' Act is applicable although the application under S 35 of the Act is presented to the Board after the execution case is started. (*Dharmyashree C. J. and Bhattacharya, J*) FATIMA KHANUM v. MANINDRA CHANDRA 41 CWN 1125

—S 35—*Executive Court informed by Board of pending application—Not to act until on prescribed form—Court is bound to stay proceedings.*

The provisions of S 35 of the Bengal Agricultural Debtors' Act are mandatory and once the executing Court is informed by the Board that there is an application pending under S 35 it must act under that

BENGAL CESS ACT (1880) S 41

Before the Board determines the amount of the debt, the Civil Court has no jurisdiction to go into that question and refuse to stay proceedings on the ground that as the debt is above Rs 2500 the Board has no jurisdiction to deal with the same. (*Aslam Ali and Rao, JJ*) HARAGORINDRA v. HOLANATH

187 IC 95—12 RC 511—44 OWN 172—

A.I.R. 1910 Cal 112

BENGAL ALLUVION AND DILUVION REGULATION (X OF 1825), Ss 2 and 4—*Accretion—Ownership of unclaimed salt land—Determination—General rule as to—Custom—Onus* See 1939 Dig., Col 49 MAHABHOJA LAL SHIVAR PRASAD

186 IC 561—12 RA 415

—S 4—*Right under—Absence of offer by paltidar to pay additional rent for increment to his tenure—Effect of.*

The absence of an offer by the paltidar to pay additional rent for the increment to his tenure cannot take away the right conferred on him by S 4 of Regulation XI of 1825. (*Mitter and Roxburgh, JJ*) MIN NAROPPO ZEMINDARY CO. LTD v. LILJOY SINGH DUDHORIA 72 CLJ 14

—S 4—*Scope—Accreted land held under*

KAMARAY PRASAD CHAUDHURI
CH 6 BR 84=
RP 282=21 Pat LT 181=
AIR 1940 Pat 131

ACT (IX OF 1880), S 6—*Net
ing of* See 1939 Dig., Col 49
COAL CO. LTD v. CHANIAN
186 IC 95—12 RC 460

I P Code—*Sanction of Collector—If necessary*

S 54 of the Bengal application except in mentioned therein fore, not necessary for ces under Ss 465 46 and Edgley JJ) CHARAN I.L.R.

13 RC 44=4

—S 54 (a)—*Of ment falsely endor permission for prosecution—If necessary*

A.I.R. 1940 Pat 180

The question as to what is the amount of a debt of a particular debtor is to be decided by the Board under Rule 145 of the Bengal Agricultural Debtors' Rules

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in land whether rent paying or not. The landlord has obtained a decree for cess person in possession of his land does not *res judicata* on the question of the defendant's status as a tenure holder so as to bar a suit in ejectment as a trespasser or tenant at will. (*Harris C J and Manohar Lal J*) SHIVA PRASAD SINGH v.

BENG. AGR. DEBTORS' ACT (1936), S. 27.

—Ss. 27 (1) and 25 (1) (e)—Award converting usufructuary into simple mortgage—jurisdiction of Board.

prescribed by the terms of the mortgage (*Edgley, J.*)
FAZLUR RAHMAN SARKAR v. ATAL BEHARY GHOSH
I L R. (1940) 2 Cal. 203

—S. 33—Suit for ejectment under S. 48 C of the Bengal Tenancy Act—If in respect of debt constituted by arrears of rent

A suit for ejectment under S. 48 C of the Bengal Tenancy Act in which there is no claim for arrears of rent, is not a suit in respect of arrears of rent and is, therefore, not a suit in respect of a debt within the meaning of S. 33 of the Bengal Agricultural Debtors' Act.

although the defendant in
rd. (*Biswas, D. v. BASIR*)

SHEIKH. A I R 1940 Cal 523—44 C W N 1113.

—S. 34—Applicability—Decree of High Court transferred to Munsif for execution—Notice to Munsif for stay—Legality See 1939 Dig. Col. 46. TARAK NATH KUNDU v. PANCHANON DUTT.

185 I C 131—12 R C. 338

—S. 31—"Civil Court"—If includes High Court

BENG. AGR. DEBTORS' ACT (1936), S. 34.

the debt had been extinguished by the sale, it would revive after the sale had been set aside and the provisions of the Bengal Agricultural Debtors' Act would

debtor paid to the purchaser a certain sum, the sale would be set aside. Instead of paying, the judgment debtor obtained a stay order from a Debt Settlement Board.

Held, that the Court was not bound to stay the proceedings. (*Henderson, J.*) KRISHNA GOBINDA v. SALAMATULLA. 44 C W N. 789.

—S. 34—Notice for stay of execution—Validity—Notice omitting one decree-holder and adding stranger as judgment debtor

A notice under S. 34 of the Bengal Agricultural Debtors' Act issued in the prescribed form giving correctly the number of the execution case which is to be stayed is not rendered invalid by the mere omission of the name of one of the decree holders or by the inclusion of the name of a stranger as a judgment debtor. These are mere formal defects which cannot possibly affect the merits (*Henderson, J.*) PYARI MOHAN MANJHI v. HASHEM ALI KHAN.

I L R (1940) 2 Cal 226.

—S. 34—Notice under—Suit for foreclosure of mortgage by conditional sale—If must be stayed See 1939 Dig. Col. 48. ABDUL LATIF v. ABDUL GANI SERANG. I L R (1940) 1 Cal 133—185 I C 393—12 R C 358.

—S. 34—Order staying or refusing to stay execution—Appeal See C. P. CODE, S. 47—APPEAL.

44 C W N 361.

stayed and time granted for
—Notice received by Court
fict Court fee—If should be

49 NATHUMULL BHUDU—
I L R (1940) 1 Cal 10—
C 9—A I R. 1940 Cal 273

g in relation to debt—Appeal
and execution sale—Notice

GENERAL CERS ACT (1970) S 43

But as the B and determines the amount of the debt the Civil Court has no jurisdiction to go to that question and refuse to pay your wages on the ground that as the debt is given to 251 (C) the B and has no jurisdiction.

1871C 95-12 R.C. 244-44 OWN 172-
AIR 1210 CAL 112

NEURAL ALLUVION AND DILUVION REGU-
 LATION (X) OF 1823, 8x 2 and 4—Accretion—
 (Therap. p. 1) of water table land—Determinations
 General rule as to—Custom—(One) See 1939 Eng. Cal
 42 MARAL STY (ALFHEIMAR) (TRAIL)
 1916 ECL-12RA 415

—B. 4—Right under 4th row of chrs by palm dat
to pay and to send out for in account to transportation

The above is an order by the patient's to pay
all the amount for the instrument to the Hon. & Council
take away the right conferred on him by No. 4 of Regula-
tion VI of 1925. (M. J. and K. Singh, J. J. Singh
NARAYAN ZINGINJASKA (C. I. T. & J. J. SINGH
MILWAUKEE 72 GLJ 14

-----5 4-8 1st - 1 ret'd land hel' under
d' court pr p'fect

The provisions of Q (4) of Regulation XI of 1825 appear to contemplate that the parent holding and the accretion shall together form one single holding and that the estate of the occupier in the accreted land shall be exactly the same as the estate which he enjoys in the parent holding. This is not possible where the accreted land is held, under proprietors other than the proprietors of the parent holding (*James and Chatterji* 17). RAMASRAY PRASAD CHAUDHURY v. RAMSARAY SINGH 6 B.R. 84 = 184 I.C. 838 = 12 R.P. 282 = 21 Pat.L.T. 281 = A.I.R. 1940 Pat. 131

BENGALCES ACT (IX OF 1880, S 6— Net
annual profit—Steering of *See* 1939 Ind, Col 49
NEW LEBRONHUM COAL CO LTD & CHABIAN
MILL KANNAN 18010 253-12 R.C. 400

~~~~~S 37—Scope—Non compliance—Effect—  
Tenure expiration assessment—Liability to cess

Where the procedure prescribed by S 37 of the Cess Act is not followed with the result that certain tenures have escaped assessments no cess would be payable either at the old rate or at any rate at all (*Harries, CJ and Menohar Lall, J*)  
HARSANUDDIN DISE : ACADHU MOHAPATRA  
18 Pat 723=188 IC 838=13 RP. 43=  
6 RB 746=21 Pat.LT 637=  
AIR 1940 Pat 180

—B 41 (2)—Decree for cess under—If conclusive on question of defendant's status as tenantholder—Subsequent suit in esse tenant at will or trespasser—Res judicata

A mere finding that a person is a tenant holder for the purposes of the Cess Act does not amount to anything more than that he holds some interest in the land which makes him liable for cess. The holder of a tenure for purposes of the Cess Act includes all persons holding any interest in land, whether rent paying or not. The fact that a landlord has obtained a decree for cess against a person in possession of his land does not operate as *res judicata* on the question of the defendant's status as a tenant holder so as to bar a suit in ejectment as a trespasser or tenant at will. (Harris C 1 and Manohar Fall 1) SHIVA PRASAD SINGH

**BENGAL CESS ACT (1880), S 45**

MANDIRA KUMARI DEBI 190 I C 581=  
23 R P 212=21 Pat L T 277=A I R 1940 Pat  
438

—S 45—Construction—"Recovered"—Meaning of

The word "recovered" in S 45 of the Bengal Cess Act means "sued for" or "recovered by means of an action" (*Harriss, C J and Fazl Ali, J*) MANGTU LAL BAGARIA v SECRETARY OF STATE 18 Pat 854=187 I C 727=6 B R 549=12 R P 647=1940 P W N 45=A I R 1940=Pat 161

—S 45—Scope—Levy of cess—Decision of Revenue Court permitting recovery—Suit to set aside—Jurisdiction of Civil Court

The question whether cess was recoverable in a particular case under S 45 of the Cess Act is to be decided by the Revenue Court issued the certificate, and if that Court decided, rightly or wrongly, that the cess was recoverable and the claim was not barred by limitation, a suit cannot be entertained by a Civil Court to set aside that decision. A Civil Court can entertain a suit only if the order of the Revenue Court is without jurisdiction, and not because the decision of that Court is not correct (*Harriss, C J and Fazl Ali, J*) MANGTU LAL BAGARIA v SECRETARY OF STATE 18 Pat 854=187 I C 727=6 B R 549

—S 54—Re valuation of free lands were included by Collector of such lands for cess—Service

The expression "part of a village" in the Cess Act covers a part of the village of certain specified estates which were attached to the rent free lands or to which the rent free lands were attached by an order of Collector under S 71 of the Act. Before therefore any liability to pay cess could attach to such lands under the Act.

—S 81—Owner and occupier—Right of contribution—Col 49 NEW BEERBOOM CHANDAN MALL KARNANI

—S 93—Notification to tenants holders—Collector's power

After a notification is issued under S 93 of the Act in respect of an estate which is a cess estate.

SRINIVAS  
1

—S 100—Collector See 1939 D G Col 49 KUMAR NARENDRA NATH ROY v MIDNAPORE ZEMINDARY CO., LTD. A I R 1940 Cal 115

**BENGAL COURT OF WARDS ACT (IX OF 1879) S 10 (c)—If confers absolute immunity**

S 10 (c) of the Court of Wards Act does not confer absolute immunity upon a ward of the Court of Wards

**BENGAL PARTITION ACT (1897) S 99**

(*Henderson and Sen, J J*) K G M FAROOQUI HADIBUR RAHAMAN CHOWDHURY 44 O W N 749  
—S 59 A—Manager of estate under Court of Wards—Public servant

The manager of an estate under the Court of Wards in Chota Nagpur is by the operation of S 59 A of the Court of Wards Act, a public servant within the meaning of the Penal Code (*Harriss, C J and Manohar Lal, J*)

—S

confined to period of ward's lifetime

S 60 A of the Bengal Court of Wards Act is in the

—S 60 A—Applicability after relinquishment of estate by Court of wards

It cannot be held that S 60 A of the Bengal Court of Wards Act

A 115 of the rules made under the Court of Wards Act is not *ultra vires* Ss 69 and 70 empower the making of such a rule (*Harriss, C J and Manohar Lal, J*)

**BENGAL CRUELTY TO ANIMALS ACT (I OF 1912)**

A I R 1940 Cal 328

**EMBANKMENT ACT (II OF 1882), S 57—Notice under—If condition precedent of liability See 1939 D G Col 50**

**BENGAL ESTATES PARTITION ACT (V OF 1897), S 99—Applicability—Co-sharers—Bakshi**

## BENG. EST. PARTITION ACT (1807). S 80.

lands—Some co-sharers placed in possession for convenience of management—Settlement of riyazts by latter course of management—Aquisition of occupancy rights—Subsequent partition—Lands allotted by partition to co-sharer subject to tenancy—Right to eject tenants

Where all the co-sharers put one of their number in sole possession of a particular portion of the estate, there is an implied authority giving him the right to represent them for all the ordinary details of management, including the settling of raiyats upon estate land for convenience of cultivation. Of course it would extend only to acts done in good faith for the benefit of the estate. Such settlements made in good faith would not be encumbrances so as to attract the operation of S. 99 of the Estates Partition Act. Certain *bakashi* lands were in possession of some of the co-sharers under a private arrangement made for convenience, the co-sharers in possession gave the defendants a raiyati settlement in 1314 fasli, since when the defendants remained in cultivating possession. The defendants were settled raiyats of the village and the settlement was made in the ordinary course of management of the estate and was a prudent act. There was no protest at any time by the other co-sharers, one of whom was the plaintiff. In 1923, there were partition proceedings under the Estates Partition Act, and on their conclusion in 1927 the different proprietors were given delivery of possession over the *takats* or allotments assigned to them respectively. The *bakashi* lands which had been settled to the defendants were allotted to the plaintiff's, *tak* partition subject to the tenancy. The plaintiff was one of the co-sharers, brought a suit for recovery of possession by ejecting the defendants and for profits.

*Held*, (1) that S 99 of the Estates Partition Act had

not otherw than in for the same plat govern as the

—S 99—Co-sharers landlords—One in exclusive possession—Grant of thika—Settled raiyat of land induced on to land by thikadar—Subsequent partition—Land allotted to another co-sharer—Sue by latter for ejectment " " " " " "  
—Accrual

—S 99—Scope of—If affects accrual of occupancy rights under Bihar Tenancy Act—Settlement of rasyat by co-sharer in possession on behalf of all co-sharers—Effect of—Occupancy rights—*See* *infra* after partition.

S. 99 of the Bengal Estate  
override the provisions of the  
prevent the accrual of occupa-  
riyati settlement is made by a  
in the ordinary course of pr  
incidents of a riyati tenancy  
against the co sharers. In cas  
that a co sharer in possession  
to induct tenants on land and c  
body of landlords by virtue of

## BENG. FOOD ADULTERN. ACT (1919), S. 6.

settlement made by him is binding on all. A tenancy interest is then created under the entire body of landlords and nothing in S. 99 of the Estates Partition Act

— S 119—Orders not liable to be contested.

What is barred by the provisions of § 119 of the Estates Partition Act or not liable to be contested or set aside by civil suit are orders passed under the different sections referred to therein, and not a suit by any person claiming an interest in land. (Varms, J.)

190 I.O. 817-7 BR 47.  
BENGAL EXCISE ACT (V OF 1909), S 63—  
*Liquor in Excise and Customs bond—If liable to con-*  
*fiscation*

The liquor in Excise and Customs bond is not liable

—B. 63—Order for confiscation—Identity of premises—If material.

Under S 63 what is material is not identity of premises but identity of the possessor AIR 1939 Cal.

under the Act has power to confiscate anything in which is liable to confiscation under S 63, within or without the district where the AIR 1939 Cal 346, *Foll. (Bartley and v. 11) GUBBAY v. EMPEROR.*

I O 267-41 Or L J 558-12 R O 668-  
A I R 1940 Cal. 205.

1. oil—Saponification value  
 2. under S 4—Rebuttal  
 3. g, Col. 51 LEGAL P.  
 4. KSHNITHI CHANDRA  
 5. 1 L R (1939) 2 Cal 400  
 6. 72 C L J 77

Government—Presumption arising under S. 4—*capability*.

*Per Henderson, Jr.*- Under S. 4 of the Budget Act  
Government has power  
of the articles of confederation are similar  
matter is contained  
with the constituents of different articles  
latter with the conditions under which  
It follows, therefore, that the pressure  
S. 4 and the entire matter



**BENG FOOD ADULTERN ACT (1919), S 6**

*adulterated from sample taken at railu*

*—Presumption if arises*

If a consignee takes delivery of a of mustered oil at a railway station for th selling it, he stores them for sale within the S 6 (1) of the Bengal Food Adulteration Act moment he takes such delivery until the actually exposed for sale in his shop The presumption under S 6 (4) of the Act, therefore arises if from a sample taken from the goods while they are actually on the railway premises the oil is found to be adulterated (*Edgley, J*) **HARI RAKSHAK DUTT v CHAIRMAN DISTRICT BOARD, BIRBHUM** 44 CWN 1139

*—Ss 6 (1) and 21—Offence under—Ghee sold not fulfilling conditions but unadulterated—Presumption arising under S 4 Whether applies*

If a person sells an article of food specified in S 6 of the Bengal Food Adulteration Act which does not fulfil the conditions as at guilty of a the Act

by a notification under S 6 fixed a standard of quality and in so doing has prescribed conditions within the meaning of S 6 If the ghee sold does not comply with the requirements of the notification an offence is committed whether or not the ghee is adulterated S 6 enacts an absolute prohibition and renders any presumption arising under S 4 and the rules made thereunder that the ghee is not genuine or is injurious to health entirely superfluous This anomaly does not arise from any necessary conflict or overlapping as between Ss 4 and 6 but arises from the manner in which th under the e two sections are expressed of the essential and irrefutable condition respect of ghee by the notification and unnecessary for the Local Government to make the declaration under S 4 (*Henderson and Khundkar JJ*) **Nt**

of

ex he took delivery of them and the time when a sample was taken is not a valid defence by reason of S 6 (3) of the Act (*Edgley, J*) **HARI RAKSHAK DUTT v CHAIRMAN DISTRICT BOARD, BIRBHUM** 44 CWN 1139

*—S 6 (4)—Possession—If includes constructive possession*

'Possession' in S 6 (4) of the Bengal Food Adulteration Act means actual physical possession and does not include constructive possession Where, therefore, at the time when a consignment of adulterated mustard oil was seized by the Sanitary Inspector it was merely in transit from the railway station to the shop of the accused and was then in the possession of the accused

*of a consignment—*  
*—Legality*

Where the seven same brand and for

**BENG LAND REGIS ACT (1876), S 78**

*—S 20—Rule making power of Local Government*

*—Scope of*

*Henderson, J*—Under S 20 of the Bengal Food Adulteration Act, the Local Government may make rules determining what deficiencies in or additions to any article of food, the normal constituents of which have been declared under S 4, shall raise the presumption that such article is not genuine or is injurious to health The essential thing therefore is that the rules should refer to deficiencies in or addition to any article of food that is to say, they must lay

genuine The presumption in the Act is a rule of evidence made by S 4 itself It is not open to the Local Government to make a further rule of evidence under S 20 (*Henderson and Khundkar JJ*) **NOW RANGA LAL v CHAIRMAN MIDNAPORE MUNICIPALITY** ILR (1940) 2 Cal 82=190 IC 186=13 BC 152=41 Cr LJ 849=44 CWN 615=AIR 1940 Cal 324

**BENGAL GENERAL CLAUSES ACT (I OF 1900)**

stantive right as well as the procedure by which it was enforced and in such cases if the rights are saved in

if the  
and  
ETALI  
148=

44 CWN 729=AIR 1940 Cal 423

*—S 8 (e)—“Instituted, continued or enforced” — Interpretation*

The words “instituted continued or enforced” in S 8 (e) of the Bengal General Clauses Act are to be taken with each of the words ‘investigation, legal proceeding or remedy’ so far as they seem to be appropriate (*Mukherjee and Akram, JJ*) **DHIRENDRA NATH ROY v IJJETALI MIAH** ILR (1940) 2 Cal 148=44 CWN 729=AIR 1940 Cal 423

**BENGAL LANDLORD AND TENANT PROCEEDURE ACT (VIII OF 1869), Ss 38 and 39—**

## BENGAL LAND REVENUE ACT (1876), S 79

he rent and he has complied with the law by obtaining registration of his name as a proprietor. It does not take away his right to recover the rent. The right to the rent of an estate being in the proprietor, though not registered, the landlord cannot take it away. When a suit has been instituted within the period of limitation, the fact that the registration is effected only subsequently and beyond the period of limitation will not make the claim in the suit time barred. The section does not bar the right to sue if the rent is due, strictly effect is that the liability for rent cannot be enforced in the absence of registration. (*For A and C's case JJ*) DOMAN SAHU v. GANCU NAYAK 115 I C 638—12 R F 404—21 Pat L T 165—1910 P W N 566—6 B B 229—AIR 1910 Pat 500

—S 79 *Period of proof—For Tenancy Act Ss 60 and 72*

A defendant in a suit for rent who claims in tenancy under S 79 of the Bengal Land Registration Act and under S 60 and 72 of the For Tenancy Act must prove that he is in fact a tenant to the proprietor subsequent to the expiry of the term of the lease. (*A and C's case JJ*) BACHU NARAIN SINGH v. MAHOMED UMROO 190 I C 733—7 B R 48—21 Pat L T 336—AIR 1910 Pat 555

## BENGAL LAND REVENUE SALES ACT (1907 1859) Ss 2 and 3—Notice to proprietor under S 94

—S 5—Applicability—Part only of estate attachment. See 1939 D G Col 52 KUMAR NATH v. DRAWATH ROY v. MIDNAPORE ZEMINDAR LTD AIR 1940 Cal 115

—S 14—Entire estate, when can be sold—Duty of Collector before sale—Separate accounts if to be closed. See 1939 D G Col 52 KUMAR NARENDRA NATH ROY v. MIDNAPORE ZEMINDAR CO. LTD AIR 1940 Cal 115

—S 14—One co sharer paying entire arrears—Purchase if becomes complete—Subsequent payment of same amount by other co sharers—Effect of

When one co sharer has paid the entire amount

—S 14—Sale under—When effected

A sale under S 14 is not really made by the

## BENGAL LAND REVENUE SALES ACT (1859), S 33

(*Mukherjee and Roxburgh JJ*) KAMAL KRISHNA v. HEMENDRA KRISHNA

187 I C 286—12 R C 556—71 C L J 413—44 C W N 129—AIR 1940 Cal 39

—S 14—Ten days period expiring on holiday—Period, if extended till re-opening day

(*Per Roxburgh, J—Obiter*)—The ten days period in S 14 is not absolute. If the period of ten days has expired on a holiday, the period is extended till the re-opening day. (*Mukherjee and Roxburgh, JJ*) KAMAL KRISHNA v. HEMENDRA KRISHNA 187 I C 286—12 R C 556—71 C L J 413—44 C W N 129—AIR 1940 Cal 39

—S 17—Applicability—Attachment under S 99 of Civil Act—Sale of estate under attachment—Jurisdiction of Collector. See 1939 D G Col 53 KUMAR NARENDRA NATH ROY v. MIDNAPORE ZEMINDAR CO. LTD AIR 1940 Cal 115

—S 33—Applicability—Suit by co sharer for declaration that he has preferential title and that sale should stand entirely in his favour

It may be assumed that S 33 is not confined to sales by public auction under the Act, but also applies to a sale under S 14 of the Act. But in order to attract the operation of S 33 the suit must be one to annul the sale and this presupposes that the party suing is the defaulting co sharer or any other person who derives his title from him. Where a co sharer impeaches the rights of the other co sharers to become purchasers by reason of the subsequent deposits they made and

does not come within the purview of S 33 under the

the Act of Act XI

a of the plan

of was vested

in any of the other co sharers by reason of the

payments they made under S 14 of the Revenue

Sale Law (*Mukherjee and Roxburgh JJ*) KAMAL KRISHNA v. HEMENDRA KRISHNA

187 I C 286—12 R C 556—71 C L J 413—44 C W N 129—AIR 1940 Cal 39

—S 33—Question of substantial injury not

specific ground of appeal before Commis

—Sustainability of suit

certainly incumbent upon the plaintiff in

der S 33 to establish that he has suffered

substantial injury by reason of the irregularity

of but it is not necessary that the

substantial injury must also be made

ground of appeal before the Commis

(*Mukherjee and Roxburgh JJ*) KAMAL KRISHNA v. HEMENDRA KRISHNA

187 I C 286—12 R C 556—71 C L J 413—44 C W N 129—AIR 1940 Cal 39

—S 33—Sale—Meaning of

Per *Roxburgh J*—“Sale” necessarily includes the

whole procedure from issue of notices under

16 up till the final completion of the

its narrower sense as the corollary to

A sale is conducted contrary to the

the meaning of

of these pro

at the time of

(*Roxburgh, JJ*)

## BENG LAND REV SALES ACT (1859), S 3 4

KAMAL KRISHNA v HEMENDRA KRISHNA  
187 IC 286=12 RC 556=71 CLJ 413=  
44 CWN 129=AIR 1940 Cal 39

—S 34—Effect of annulment of sale  
Per Roxburgh, J.—The effect of annulment of sale is dealt with in S 34 o clearly contemplates restoration assumed to be decree-holder, o and cond:  
KAMAL K

187 IC 286=12 RC 556=71 CLJ 413=  
44 CWN 129=AIR 1940 Cal 39

—S 37—Annulment of tenure—Tenure holder claiming nishkar title—Proof required See 1939 Dig Col 54 ASHA MOVI BASU v BARANAGORE JUTE FACTORY CO LTD  
12 RC 581=AIR 1940 Cal 141  
187 IC 535=

—S 37—Recovery of possession on basis of revenue sale—Suit for—Onus of proof See 1939 Dig Col 54 ASHA MOVI BASU v BARANAGORE JUTE FACTORY CO LTD  
187 IC 535=12 RC 581=  
AIR 1940 Cal 141

—Ss 37, 38 and 39—Registration of tenure in respect of undivided share of land—Protection of tenure holder See 1939 Dig Col 54 v  
NATH ROY v

—S 37, p  
The word 'rayat' in the proviso to S 37 must be read in its ordinary sense of a cultivator It does not include the successors in interest of rayats (Hender

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Col 55 KUMAR NARENDRA NATH ROY v MIDNAPUR  
187 IC 535=12 RC 581=  
AIR 1940 Cal 115

AIR 1940

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## BENG MONEY-LENDERS ACT (1933), S 4

Under S 11, second of the Bengal Regulation II of 1805 the cause of action in respect of the right of the Government to assess invalid *lakhiraj*es with revenue arises on the date of the grant at least when possession is taken h grant (Mitter and Akram,  
BENGAL v MRITUNJOY  
1 Cal 216=44 CWN 101=  
AIR 1940 Cal 455

—S 11, Second—Claim barred under—If revived by subsequent repeal of Regulation

If the Government's right to assess invalid *lakhiraj*es becomes barred under S 11, second of the Regulation II of 1805, the subsequent repeal of that Regulation by Act VIII of 1868 would not revive that right (Mitter and Akram, JJ) PROVINCE OF BENGAL v MRITUNJOY  
ILR (1940) 1 Cal 216=44 CWN 101=  
AIR 1940 Cal 455

—S 11, Second—If impliedly repealed by Act XIV of 1859

S 11, second of Bengal Regulation II of 1805 was not repealed by necessary implication by Act VIII of 1868 It was expressly repealed by Act VIII of 1868, as having become unnecessary of time (Mitter and Akram, JJ)

PROVINCE OF BENGAL v MRITUNJOY  
ILR (1940) 1 Cal 216=44 CWN 101=  
AIR 1940 Cal 455

BENGAL LOCAL SELF GOVERNMENT ACT 1917 and 75—Roads under control of District Board See 1939 Dig Col 54 ASHA MOVI BASU v DISTRICT BOARD OF CHAIRMAN OF UNION BOARD IN JURISDICTION OF CIVIL COURT IN SELF GOVERNMENT ACT  
44 CWN 362

—S 146—Notice of one month's notice—If can be excluded  
Under S 146 of the Bengal Local Self Government Act the notice can be excluded

v SATYENDRA KUMAR DAS 44 CWN 694

loan—Meaning of—

Lenders Act, the phrase is the amount actually money lender, the original loan and not what is stated as the principal in the



**BENG REV. FREE LANDS REG. (1800), S 10**

the heirs of the grantee to remain upon the land in perpetuity. Therefore the rights of the heirs of the grantee to continue to hold the land in perpetuity agreeably to the holders and their heirs, also.

rid of  
grant  
of

BEN  
REC  
entry

**Non-registration of grant—Presumption.**

From the mere fact that there is no entry in the *lakhras* part of the *Parnam* register relating to a particular presumed that the take steps to register the Government included in the grant.

PROVINCE OF BENG

I L.R. (1940) 1 Cal. 216=44 C.W.N. 101=  
A.I.R. 1940 Cal. 455

**BENGAL TENANCY ACT (1885), S 26 F.**

Where a co sharer landlord is placed in exclusive possession of joint land for convenience by mutual arrangement among all the co-sharers gives a *thika* of the land.

AGRICULTURAL Act to hold the land as part proprietor on the conditions mentioned in S 22. (*Agarwala and Rowland, J.J.*) **INDER CHANDRA v SHRI RADHA**

sharer proprietors, even though they may not have acquired the *raiyati* interest in the same proportions as

WAR PRASAD

6 B.R. 200=185 I.C. 557=  
12 R.P. 381.

—S 26-B (as amended in 1928)—If

considered sufficient to extinguish loan—personal cover

S 26-B is subject to the provisions of the Act, it does not affect the right of the tenant under S 87 of the Act if the his holding without arranging for his rent as it fell due (*Edgley, ROSAD v RAMJAN SARKAR*).

A.L.R. (1939) 2 Cal. 471=186 I.C. 555=  
12 R.C. 478=70 C.L.J. 501=44 C.W.N. 118=  
A.I.R. 1940 Cal. 6.

—S. 18 A—Sale certificate—If instrument of transfer

Under S. 18 A of the Bengal Tenancy Act, a sale certificate cannot be treated as an instrument of transfer by the tenant (*Agram, J*) **DAST v. JNANENDRA NATH GHOSH**

A.I.

—S 22—Co sharer landlord in

—Thikadar under—Settlement of land

owning share in proprietary interest—

party rights—Subsequent collectorate partition—Land

allotted to another co-sharer—Right of latter to recover

possession—Bengal Estates Partition Act, S. 99.

—S 26-E—Landlord's fee—Landlord's right to

—S 26 F (as amended)—Applicability—Document of transfer executed before and registered after section coming into force

## BENGAL TENANCY ACT (1885), S 26 F

## BENGAL TENANCY ACT (1885) S 26 G

*See* *1939 Dig. Col. 61* *DEEPA CHANDRA*  
 =185 LO 704=  
 12 R O 402  
*needing under-*  
*ry parties*  
 was registered. The material date is the date of registra-  
 tion and not the date of execution. The provisions  
 of the new  
 transfers in  
 they were e  
 (*Mukherjee*  
 GUNADHA

There is no provision in the Bengal Tenancy Act  
 which makes it necessary that the co-sharer tenant who

—S

*ing—Ten*

S 26 F

Amending

S 18(2) &

new section

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S 26 F

not inappl

jointly wit

OTHER PERSONS WHO ARE S 26 F IS OUT AND OUT

*its repeal—Order passed thereon after repeal—Validity*

Where the application for pre-emption was made at a  
 time when S 26 F of the Bengal Tenancy Act was  
 operative, an order can be validly made on that applica-  
 tion after its repeal by Act VI of 1938. Neither the

—S 26G (as amended)—'Any other law for the  
 time being in force'—If includes Evidence Act. *See*  
 1939 Dig. Col. 62. PRAFULLA KUMAR MAITY *v*  
 UDAY CHANDRA PRADHAN 185 LO 587=  
 12 R O 391

710 LJ 400—AIR 1940 Cal 545

—S 26 F—Application under old section after  
 amendment—Maintainability—Transfer before amend-  
 ment. *See* 1939 Dig. Col. 60. PROFULLA CHANDRA  
 GANAPATHY *v* I AJ MOHAN DAS

*gave undertaking to pay principal at stipulated times*  
*Mortgage given right of sale in case of default of*  
*encumbrance*

Under a mortgage deed the mortgagor gave up pos-  
 session of the properties to the mortgagee who

## BENGAL TENANCY ACT (1885) S 26 G

the money was paid. There was a further stipulation that if it was subsequently disclosed that the mortgagor had already mortgaged the properties to other persons or before payment of the mortgage to some other person, the mortgagor would be entitled to the proceeds of the mortgage.

mortgage  
act applied,  
at any per  
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the stipula  
ll the mort

gaged property was in the nature of an indemnity clause (*Mukherjee and Akram, JJ*) ABHOY CHARAN v HARENDRA 44 O W N 760-

A I E 1940 Cal 437

See also (*Mukherjee and Akram, JJ*) BHUTNATH  
JANA v GOPAL PRASAD 41 CWN 761=

AIR 1940 Cal 436

—S 26 G—Applicability—Niskar holding

## BENGAL TENANCY ACT (1885). S 26 G

to the mortgagee. It was then stipulated that after a period of 28 years the debt would be extinguished both

There was a  
eed that in the  
ed of the pro-  
account of the  
may interest at

certain rate per month. There was, in addition to this, a personal covenant to pay.

*Held*, that the mortgage in question was an anomalous mortgage (*Hemlerson, J*) SURESH CHANDRA v JADAV CHANDRA 189 I.C 866—

13 RC 125-AIR 1340 CAL 372

See 1939 Dig, Col 62      DIGAMBAR PONDA v SATISH CHANDRA DAS  
185 IC 368—12 B C 357

—S 26 G—Order in proceeding under—When  
res judicata—Revision See 1939 Dig Col 62

188 I C 777-13 R C 30  
—B 26-G—Order of Revenue Officer—Revision—  
C. P. Code, S. 115

o) mortgaged property delivered to mortgagee

A usufructuary mortgage can only come into existence

GORAIN v. CHANDRA BHUSAN SARKAR

710 LJ 255-44 O W N 42R

interest The document mentioned a due date for pay-

entitled to realise his dues by sale of other properties of  
as disposed of  
would be en  
with interest

AN & SHASHI  
#13 R Q 32=

71 C L J 477=44 C W N 465=

AIR 1940 Cal 281

mortgage but a mortgage by conditional sale to which S 26-G(5) of the Bengal Tenancy Act was not applicable (*Dirbhikere, C J and Muz* . . . . .).

DRA NATH v KALIPADA HAL

—S 26 G—*Mortgaged land represented as mokarari holding—Mortgagor stopped from showing that it is occupancy holding*

A marigagor who had represented to the mortosone

| extinguished - Nature of mortgage

A mortgage bond provided that the mortgagee was to remain in possession of the property and enjoy the rents and profits thereon.

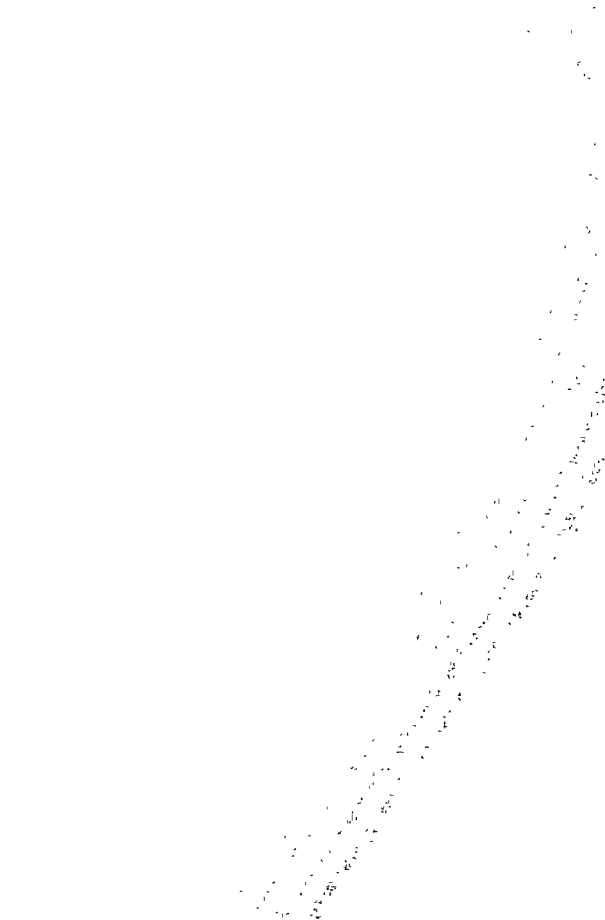
12 JUL 96-A LK 1940 Cdl 486

—S. 28 G.—Mortgage—Usufructuary or anomalous  
—Construction

A mortgage deed provided that on receipt of certain amount the possession of the property was made over.

expected amounts. In the event of that contingency the mortgagor undertook personally to make good the deficiency from his own pocket.

*Held*, that the personal covenant was in the nature of a contract to indemnify the mortgagee in the event of





PUNJAB, TENANCY ACT (1905) S. 26 G.

or before payment of the mortgage-money mortgaged to some other person or if surrendered the lands in favour of the mortgagee would be entitled to recover money by sale of the mortgaged properties

*Held* that the deed created a usufructuary mortgage to which S 26-G of the Bengal Tenancy Act applied, that the term fixed in the deed did not import any personal liability but laid down the minimum time within which the mortgagor could redeem, and that the stipulation which gave the mortgagee a right to sell the mortgaged property was in the nature of an indemnity clause (*Mukherjee and Akram, JJ*) ABHOV CHARAN v HARENDRA 44 CWN 760 = A.I.R. 1940 Cal 437.

*See also* (*Mukherjee and Akram, JJ*) BHUTNATH JANA v. GOPAL PRASAD. 44 CWN 761 =

BENGAL TENANCY ACT (1885), S. 26 G.

to the mortgagee. It was then stipulated that after a period of 28 years the debt would be extinguished both

There was a deed that in the deed of the pro-account of the pay interest at certain rate per month. There was, in addition to this, a personal covenant to pay.

*Held*, that the mortgage in question was an anomalous mortgage (*Henderson, J.*) SURESH CHANDRA v. JADAV CHANDRA. 189 I.C. 866 = 13 R.O. 125 = A.I.R. 1940 Cal. 372.

S 26-G Order in—Proceeding under—Appeal. *See* 1939 Dig, Col 62 DIGAMBAR PONDIA v SATISH CHANDRA DAS 185 I.C. 368 = 12 R.C. 357.

S 26-G—Order in proceeding under—When *res judicata*—Revision. *See* 1939 Dig, Col 62. KISHORI MOHAN v. MAJANNESSA.

185 I.C. 777 = 13 R.C. 30  
r—Retention—

visional jurisdiction Officer  
Act. Even  
adicial dates  
C. P. Code,  
ordinate to the  
HA BEHARI

1 CWN 426.

rtgagor  
of the  
rded as

S 26-G (1-a)—'Usufructuary' mortgage—  
Meaning of—Additional covenants—If can change  
character of mortgage.

would then ripen into an absolute sale.

*Held*, that the transaction was not a usufructuary mortgage but a mortgage by conditional sale to which was not appli  
J) MAHENDRA

19 C.T. 105 =

(*Nasim Ali and Rau, JJ.*) PANCHANAN v. SHASHI BHUSAN. 185 I.C. 819 = 13 R.C. 32 = 71 C.L.J. 477 = 44 CWN 465 = A.I.R. 1940 Cal. 281.

Ss. 26-G (5) and 3 (3)—Complete usufructuary mortgage—Mortgage with possession for certain period—  
Does not convert into a sale and usufructuary mortgage

good the def-

the nature of  
in the event of



mortgaged to some other person or the mortgagor surrendered the lands in favour of the landlords, the mortgagee would be entitled to recover the mortgage-money by sale of the mortgaged properties

*Held*, that the deed created a usufructuary mortgage to which S. 26-G of the Bengal Tenancy Act applied, that the term fixed in the deed did not import any personal liability but laid down the minimum time within which the mortgagor could redeem, and that the stipulation which gave the mortgagee a right to sell the mortgaged property was in the nature of an indemnity clause (*Mukherjee and Akram, JJ*) **ABHOY CHARAN v. MAHENDRA**, 44 CWN 760 = A I R 1940 Cal 487

of mortgage property delivered to mortgagee

delivers possession to the mortgagee of part only of the mortgaged property, the mortgage must be regarded as an anomalous mortgage, and as such S. 26 G of the Bengal Tenancy Act can have no application to it (*Edgley, J*) **SITAL PRASAD CHANDRA CHAKRAVARTY**

—S. 26 G—Mortgage—

*Held*, that the transaction was not a usufructuary mortgage but a mortgage by conditional sale to which S. 26-G (5) of the Bengal Tenancy Act was not applicable (*Derbyshire, C J, and Mukherjee, J*) **MAHENDRA NATH v. KALIPADA HALDAR**, 44 CWN 1009 = 72 C L J. 95 = A I R 1940 Cal 486.

—S. 26 G—Mortgaged land represented as mokarari holding—Mortgagor, if stopped from showing that it is occupancy holding.

A mortgagor who had represented to the mortgagee that the land mortgaged was *mokarari* holding is not stopped from showing that it is really an occupancy holding which will attract the operation of S. 26 G of the

1885), S. 26-G. stipulated that after a be extinguished both interest There was a stipulation by which the mortgagor agreed that in the event of the mortgagee being dispossessed of the property in any way, the mortgagor would on account of the period of dispossession, be liable to pay interest at certain rate per month. There was, in addition to this, a personal covenant to pay.

*Held*, that the mortgage in question was an anomalous mortgage. (*Henderson, J.*) **SURESH CHANDRA v. JADAV CHANDRA**, 189 IC 866 = 13 R C. 125 = A I R 1940 Cal 372.

—S. 26-G Order in—Proceeding under—Appeal. See 1939 Dig., Col. 62 **DIGAMBAR PONDIA v. SATISH CHANDRA DAS**, 185 IC 368 = 12 R C 357.

—S. 26-G—Order in proceeding under—When

Meaning of—Additional covenants—If can change character of mortgage. CWN. 426.

The term 'usufructuary mortgage' in S. 26-G (1 a) of the Bengal Tenancy Act is to be understood in the sense of Property Act. If character is not covenants, etc.

**BHUSAN**, 188 IC 819 = 13 R C 32 = 71 C L J. 477 = 44 CWN 465 = A I R 1940 Cal 281.

—Ss. 26-G (5) and 3 (3)—Complete usufructuary mortgage—Mortgage with possession for certain period—Period considered sufficient to extinguish loan—Personal covenant to indemnify mortgagee if loan is not so extinguished—Nature of mortgage.

A mortgage bond provided that the mortgagee was to remain in possession of the property and enjoy the rents and profits for a certain period. The contemplation of the parties was that under normal conditions that period would be sufficient to extinguish the loan. There was a further clause in the bond which was a personal covenant to compensate the fertility of the land its fell short of the f that contingency the mortgagor undertook personally to make good the deficiency from his own pocket.

*Held*, that the personal covenant was in the nature of a contract to indemnify the mortgagee in the event of

—S. 26 G—Mortgage—Usufructuary or anomalous Construction

A mortgage deed provided that on receipt of certain amount the possession of the property was made over

## BENGAL TENANCY ACT (1885), S 26 G

his not being able to realise the entire profits and was quite outside the mortgage transaction, and that the transaction was a complete usufructuary mortgage in spite of that covenant and hence attracted the provisions of S 26 G (5) of the Bengal Tenancy Act (*Mukherjee and Akram JJ*) PRAFULLA CHANDRA GOPE v SOARU MAHAMMAD 44 CWN 726=

71 CLJ 489=AIR 1940 Cal 499

—S 26 G (5) and (6)—*If ultra vires of Provincial Legislature*

at the end of the sub section must also continue to have full effect according to its tenor. The result is that the mortgagor's right to apply for restoration of possession under S 26 G (5) and the power of the Court under S 26 G (6) to make appropriate orders upon such an application are in no way affected (*Asim Ali and Rau JJ*) PANCHANAN & SHASHI BHUSAN 188 IC 819=13 RC 32=71 CLJ 477=

44 CWN 465=AIR 1940 Cal 281

—Ss 26 G (5) and 3 (3)—*Mortgage—Construction*

In a mortgage deed the mortgagor purported to mortgage land to the mortgagee to secure an advance of certain amount. Possession of the property was delivered to the mortgagee and there was an express covenant that the mortgagee would remain in possession till the mortgage money was paid. There was a stipulation to the effect that in case the mortgagee was

of the property of the mortgagor

*Held*, that the mortgage was usufructuary and the

giving to the mortgagees a right to bring a suit for recovery of the mortgage money if they are dispossessed and to the mortgagor a right to redeem a part of the mortgaged property on payment of a proportionate amount of the total mortgage money does not in any

—S 26 G (5)—*Uti possidetis in line with occupancy holdings and tenures—Mortgagor's right to recover possession of occupancy holdings*

## BENGAL TENANCY ACT (1885), S 26 G

If a mortgage-bond includes both occupancy holdings and permanent tenures, the mortgagor, though not entitled to get back the tenures, is entitled to recover possession of the occupancy holdings under S 26 G (5) of the Bengal Tenancy Act (*Mukherjee and Akram JJ*) PRAFULLA CHANDRA GOPE v SOARU MAHAMMAD 44 CWN 726=

71 CLJ 489=AIR 1940 Cal 499

—S 26 G (5)—*Mortgage of occupancy holding describing it as muckaram tenancy—Mortgagee cognizant*

NATH JANA v GOPAL PROSAD 44 CWN 761= AIR 1940 Cal 436

—S 26 G (6)—*Mortgagor in possession as adihars under mortgage—If competent to apply for restoration of possession*

Although the mortgagors are in possession of the mortgaged property as *adihars* under the mortgage, they are competent to apply for restoration of possession under S 26 G (5) of the Bengal Tenancy Act. They are either labourers or tenants and in either case their possession is in law the possession of the mortgagee. They can certainly claim to be restored to possession of the property in their own right (*Mukherjee and Akram, JJ*) PRAFULLA CHANDRA GOPE v SOARU MAHAMMAD 44 CWN 726=

71 CLJ 489=AIR 1940 Cal 499

—S 26 G (5)—*Order declaring extinction of mortgage debt—Legality*

A Court order was held an application under S 26-G (5) of the Bengal Tenancy Act cannot be revised by the High Court under S 115 C.P. Code. A Revenue

gits jurisdiction mortgage

J and DHANATH 44 CWN 1095

—S 26-G (5)—*Usufructuary mortgagor in possession*

—S 26 G (6)—*Order of Revenue Officer—Revision—C. P. Code, S 115*

An order made by a Revenue Officer under S 26-G (6) of the Bengal Tenancy Act cannot be revised by the High Court under S 115 C.P. Code. A Revenue

44 CWN 191=AIR 1940 Cal 111  
—S. 26-G (6)—*Order restoring possession to mortgagor—Appeal. See 1939 D.L. Col. 63*

## BENGAL TENANCY ACT (1885), S 26 J.

## BENGAL TENANCY ACT (1885) S 52

*Maintainability—Bengal General Clauses Act, S 8 (c)*  
A landlord can recover the balance of landlords' transfer fees by an application under S 26 J of the Bengal Tenancy Act even after the repeal of that section by the Amending Act of 1938 where the occupancy he right to

64. NARENDRA NATH DUTT  
I L R (1939) 2 Cal 41  
188 I C 196=12 R O 1  
S 48 C, proviso (1) (2)—*Applicability*  
*Continuous possession for 12 years as under-ryat*  
*Necessity for*  
The language of proviso (1) (2) of S 48 C of Bengal Tenancy Act clearly implies that, if an under-ryat claims protection from eviction under

—S 26 J—Deed of transfer registered before Amendment Act for transfer fee filed by landlord after  
—Maintainability See 1939 D G  
DRA NATH NAG v ASHALATA DEB  
186 I C 349=12 R O 471-A.

—S 26 J—Order to pay balance of landlord's fees  
—Mode of execution

—S 48 H—Registration of under-ryat's fees without payment of landlord's fees—Valuation—S 4

## TALORE

—Ss 26 J and 188—*Sa*  
*under erroneous description as sections—Landlord's right to recover balance of land lord's fees by application—If*  
—Bengal Gen  
Under S 26  
lord acquired  
fee as soon as an occupancy holding was sold with an  
erroneous description

—S 50—*Presumption under Applicability*  
—*finally published*  
—*status of the tenant*  
—*or presumption law*  
down in S 50 of the B T Act can no longer be justified (Henderson, J) KHODADAT BIBI v KAMALA

DHIRENDRA NATH ROY v IJFTMAL  
I L R (1940) 2 Cal 148=4  
A I R

—S 29—*Illegal enhancement of rate realized amicably for some years—Excess realisations—If can be deducted from claim for rent for subsequent years*

In a suit for rent at an enhanced rate, the defendant was found S 29 (b)

—S 50—*Presumption under Rebuttal—Slight*  
to rebut the Tenancy Act been really a same was in respect of a substantial amount (Khandkar, J) ABDUL WAHED v NAGENDRA CHANDRA LAHIRI  
44 C W N 993=A I R 1940 Cal 524

—S 51—*Presumption under Applicability*  
*Written lease*  
There cannot be scope for any presumption of the Tenancy Act, with the terms of the lease. ZAHED  
12 C L J 132

—S 43 G (3)—Operation of—Occupancy acquired by under-ryat before enactment

—S 52 (1 A)—*Retrospective effect—Suit pending in appeal*

## BENGAL TENANCY ACT (1885), S 65

deemed to be pending during the pendency of an appeal filed in that suit (*Kau, J.*) *NUR AHAMED v RASIK CHANDRA* 190 IC 799=71 CLJ 493=

44 CWN 780=AIR 1940 Cal 497

lord who  
Col 65

DARI

be claimed.

Interest on arrears of rent due in respect of a patta

JJ) *KIRAN CHANDRA ROY v. BROJESCHARAN SEN.*

fer by  
to R before amendment of Act in 1920—transferring remaining portion to K after amendment—No arrangement made regarding payment of rent due by R—Landlord's right to treat the holding as abandoned by original tenant and evict R

An original tenant transferred before the passing of the Bengal Tenancy Amendment Act of 1928, a portion of his holding to R. Subsequently, after the passing of the Act of 1928, he transferred the remainder of the holding to K. He had made no arrangement regarding payment of rent with regard to that portion of the tenancy which had been transferred to R before the passing of the Bengal Tenancy Amendment Act

Held, that the original tenant must be treated as having abandoned his holding within the meaning of S 87, Ben. Ten. Act. The landlord was therefore entitled to re-enter and might evict R from that portion of the holding which was transferred to him (*Edgley, J.*) *ANNABA*

PROSAD v RAMJAN SARKAR  
ILR. (1939) 2 Cal 471=186 IC 555=  
12 RC. 478=70 CLJ. 501=44 CWN 118=  
AIR. 1940 Cal 6

S 88 (11)—Applicability—Patta tenants

## BENGAL TENANCY ACT (1885), S 109

the omission to record the water rights for the village in the survey operations ordered before 1907. No adverse inferences should therefore be drawn from the omission to so record irrigation rights (*Agarwala and Meredith,*

JANAK DULARI

21 Pat LT 873

—Scope—Fard-ab

it will be liable to

maintain existing

and—Presumption

of correctness

An entry in the *fard ab pashi* to the effect that the arrangements for irrigation one which the Settlement under S 102 (11) (g) of the *fard ab pashi*, which is

Such an entry must be presumed to be correct under S 103 B of the Bengal

showing increase in rent of holding situate therein—Presumption of correctness—Rebuttal by lease granted after Act.

A fresh settlement of land revenue was made in respect of a taluk not subject to a permanent settlement, and an entry was made in the record-of-rights showing an increase in rent in respect of a holding situate in that taluk. In a suit for rent at the higher rate mentioned in the record-of-rights, the defendant relied on a lease granted after the passing of the Bengal Tenancy Act showing that the rent of the tenancy was permanently fixed at a certain rate. It was not shown that the right of the defendant to hold the tenancy at the rate mentioned in the lease beyond the term of the previous revenue settlement of the taluk was expressly recognised by the revenue authorities.

Held, that by the provisions of S 191 of the B T Act nothing in the lease entitled the defendant to hold at the rent mentioned therein and it could not, therefore, be said that the lease proved the incorrectness of the entries in the record of rights (*Rau, J.*) *BOKSA FUNJARI v. ANANA KHATUN* 44 CWN 778

S 103 B (5)—Presumption under—Availability against person challenging correctness of entry under S. 106.

and 105—Ex parte declaration under  
made by tenant for declaration of his  
"sustainability"  
location under S 105 of the B T Act  
as a bar under S 109 of that Act to  
"a suit" by the tenant for a declaration  
"in the land" that the tenant is not  
dation that the order passed under  
"acting upon him, as that is a matter  
subject of the application before the

**BENGAL TENANCY ACT (1885), S 26-J.****NATH SASMAL v GOBINDA PRASAD DAS.**

187 I C 530 = 12 R C. 588.

—S. 26-J—Application under after its repeal—Maintainability—Bengal General Clauses Act, S 8(c)

A landlord can recover the balance of landlord's transfer fees by an application under S. 26 J of the

General Clauses Act, it could be  
 manner as it could be done under  
 N. 729, Foll (*Mukherjee and*  
*MAL v. GOVINDA BANDHU.*

—S. 26-J—Deed of transfer  
 registered before Amendment

—S. 26-J—Order to pay balance of landlord's fees  
 Mode of execution

An order of the High Court for the payment of

sections—Landlord's right to recover balance of land-  
 lord's fees

Bengal General Clauses Act and the remedy is also  
 saved under Cl. (c) (*Mukherjee and Akram, JJ*)

rate realised amicably for some years—Excess realisa-  
 tions—If can be deducted from claim for rent for  
 subsequent years

In a suit for rent at an enhanced rate, the defendant  
 denied his liability to pay such enhanced rate, the defendant  
 that the enhancement was  
 of the Bengal Tenancy Act  
 realising rent at the enhanced rate  
 defendant for some years  
 to render account was refused

Held, that the Court should not deduct the excess  
 sum realised by the plaintiff from the claim for rent in  
 the suit. (*Akram, J*) **MOHAN**  
**BILAL ALI.**

—S. 43 G (3)—Operation  
 acquired by under raiyat before enactment of section,

**BENGAL TENANCY ACT (1885), S. 52**

See 1939 Dig. Col. 64. **NARENDRA NATH DUTTA v.**  
**ALANGA SUNDARI.** I L R (1939) 2 Cal 497 =

188 I C 196 = 12 R C 659

—S. 48 C, proviso (1) (2)—Applicability—  
 Continuous possession for 12 years as under-raiyat—  
 Necessity for.

The language of proviso (1) (2) of S. 48 C of the  
 Act implies that, if an under-raiyat is evicted  
 from eviction under this

—S. 48 H—Registration of under-raiyat lease  
 without payment of landlord's fee—Validity—Subse-  
 quent payment—Effect of S. 1039 Dig. Col. 64

—S. 50—Presumption under—Applicability—

is finally published a  
 status of the tenant  
 or presumption laid

—S. 50—Presumption under—Rebuttal—Slight  
 variation in rent—If sufficient

in rent is enough to rebut the  
 presumption of the Bengal Tenancy Act.  
 whether there has been really a  
 not whether the same was in

respect of a substantial amount (*Akhandkar, J*)  
**ABDUL WAHED v NAGENDRA CHANDRA LAHIRI**  
 44 C W N. 993 = A I R. 1910 Cal 521.

—S. 51—Presumption under—Applicability—

operation of the  
 Bengal Tenancy Act,  
 with the terms  
 of the Act. **ZAHED**  
**12 C L J 132**

—S. 52 (1-A)—Retrospective effect—Suit pending

date of commencement of that Act. A suit must be

## BENGAL TENANCY ACT (1885) § 65

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Interest on arrears of rent due in respect of a patti

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No arrangement made regarding payment of rent

due by R—Landlord's right to treat the holding

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## BENGAL TENANCY ACT (1885), § 109

the omission to record the water rights for the village in

No adverse

omission

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L T 873

—Scope—Fard-ab-

t will be liable to

maintain existing

used—Presumption

of correctness

An entry in the fard ab pashi to the effect that the

rayat will be under an obligation to pay the existing

rent to the landlord if the arrangements for irrigation

are fully maintained is one which the Settlement

der S 102 (11) (g) of

fard ab pashi, which is

Such an entry must be

S 103 B of the Bengal

f and Fard Ali, f)

LAZA

O. 418—13 RP 200—

AIR 1940 Pat 322.

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lding situate therein—

a presumption of correctness—Admittal by lease grantee—

after Act

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passing of the Bengal Tenancy Amendment Act

Held, that the original tenant must be treated

as having abandoned his holding within the

meaning of S 87 Rep Ten Act The landlord

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ed in the lease beyond the term of the previous revenue

settlement of the taluk was expressly recognised by the

revenue authorities.

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I L R (192  
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44 C W N. 778

Presumption under—Availability

ring correctness of entry under

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S 88 (11)—A...

S 88 Cl (11) of the Bengal Tenancy Act is not

applicable to patti tenures and the Civil Court has

therefore, no power under that provision to order distribution or apportionment of the rent of a patti tenure

(Nizam Ali and F...

ISHAN KUMARI

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...

S 100

The presumption of correctness of the entry in the

record of rights under S 103 R sub-S (5) of the Bengal

Tenancy Act will be available against any person who

has challenged the correctness of the record under S 106

ABDUL WAHED

44 C W N 923

AIR 1910 Cal 621

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(as amended)

ordered before co=

is to record to

abpashi—Effect of—If negative verification rights

Cl (g) of S 102 of the Bengal Tenancy Act was

added to the section only in the year 1900, by the

...

Sa 109 and 105—Ex parte decision under

S 105—Subsequent suit by tenant for declaration of his

markar right—Maintenance of

under S 105 of the P T A

under S 101 of the Act to

...

(g) and consequently no fard ab pashi could have been

prepared since the particulars to be recorded must

depend on the terms of the order This would explain

entitled to a declaration that the order passed

S 105 is not binding upon him as it is

which was the subject of the appeal



## BENGAL TENANCY ACT (1885), S. 145

Revenue Officer. (*Roxburgh, J.*) MAHOMED RAHUL AMIN v DINANDHU BARNI

188 I C 217 = 12 E C 663 =

71 C L J 101 = A I R. 1910 Cal. 235

—Ss. 145 and 187—Recognised agent of landlord

—Right to conduct and plead in rent suits S 145

Dig. Col. 67 SARAT CHANDRA ROY v.

MONDAL 185 I C 416 = 12 E

—S 146 A—Applicability—Certificate

Bengal Public Demands Recovery Act, S 20 S

Dig. Col. 67 BAJROGA KHATUN v PROVINCE OF

BEHAR 127 I C 201 = 12 E C 664 =

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

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—S 148 (h)—Person other than natural guardian

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—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

## BENGAL TENANCY ACT (1885), S. 158

certain amount of rent. He must establish also the identity of the lands of the tenancy. No decree for rent should be passed until the Court is satisfied regarding the identity of the land with respect to which the rent is payable. The Court

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

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—S 148 (h)—Person other than natural guardian

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—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

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—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

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—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

—S 148 (h)—Person other than natural guardian

**BENGAL TENANCY ACT (1885), S 159**

is unnecessary for the decision of the suit. (*Edgley, J.*) **GOUR CHANDRA v. GHAWA SINGHA** 44 O.W.N. 590

—Ss 159 and 161—*Reservation of four incumbrances—Scope and object*

branches interest of an inferior grade (*Sir George Rankin*) **PROFULLA NATH TAGORE v. SANTOSH KUMAR DAS** 100 T.C. 170—101 O.W.N. 614

S 85

An under-*rayati* created by a *rayat*, a invalid against the landlord of the *raya* S 85 (now repealed) of the Ben. Ten. perfectly valid as against the *rayat* a against a third party who purchases the interest at a certificate sale. The interest of the under-*rayat*, therefore, amounts to an incumbrance within the meaning of S 161 of the Ben Ten Act which can only be annulled by a notice served in accordance with S 167 of the Act (*Sen, J.*) **NIBARAN CHANDRA GHOSE v. PRATAP CHANDRA** 44 C.W.N. 141.

—S. 167—*Annulment of incumbrance—Service of notice—Limitation—When begins to*

knowledge of the purchaser at the sale of the existence of the incumbrance. The date of purchase from the certificate purchaser is not relevant (*Sen, J.*) **NIBARAN CHANDRA GHOSE v. PRATAP CHANDRA** 44 C.W.N. 141.

—S 167—*Fresh notice—Power of Court to issue—Question of service of previous notice pending in appeal*

The Court cannot issue a fresh notice of annulment of encumbrance under S 167 of the Ben. Ten. Act, when the question whether the notice was served or not is pending in appeal (*Sen, J.*) **KIRAN CHANDRA** 44 C.W.N. 861—71 C.L.J. 544—A.I.R. 1940 Cal. 450

—S 167—*Order refusing to issue notice—Annulment—C.P. Code S. 115*

An order of a *Munsif* refusing to issue a notice of annulment of encumbrance under S 167 of the B. T. Act, is open to revision by the High Court under S 115, C. P. Code. The *Munsif* in passing the order acts as a Court and not merely in a ministerial capacity (*Sen, J.*) **KIRAN CHANDRA v. MATILAL** 44 C.W.N. 861—71 C.L.J. 544—A.I.R. 1940 Cal. 450

—S. 170—*Deposit of decretal amount by third party—Landlord challenging depositor's right to make deposit and selling—Hidraur* Y. D. 1910—6

**BENGAL TENANCY ACT (1885), S 174.**

of deposit by landlord—If operates as recognition of depositor as tenant

When a third party has deposited the decretal

was the real purchaser of sold, the decision of the summary order and is not in circumstances, the landlord draw the deposit, the without to recognition of the depositor as tenant (*Dhale, J.*) **INDERJIT PRATAB BAHADUR SAHI v. SURAJ NARAIN** 100 T.C. 709—A.I.R. 1940 Pat. 21.

decree against  
decree amount  
right of landlord  
lost  
interest of a  
certificate stands  
cannot, merely because the executing Court

decrees obtained against the latter do not bind him (*Dhale, J.*) **INDERJIT PRATAB BAHADUR SAHI v. SURAJ NARAIN** 190 I.C. 787—A.I.R. 1940 Pat. 21.

—Ss. 170 and 171—*Right to deposit—Unrecognised transferee of non transferable holding*

An unrecognised transferee of a portion of a non-transferable occupancy holding comes within the category affected by the sale S. 171 as well as of a person is, therefore,

—S. 170 (1)—*Scope—Execution of rent decree—Third party claiming title to tenure—Right to sue for declaration of title to holding*

It is true that in execution of a rent decree a third party claiming title to the tenure is not competent to apply under O 21, R. 58, Civil Procedure Code. But S 170 (1) does not bar a substantive suit by him for declaration of title

—S 174 (1)—*Right to apply—Purchase at private sale after auction sale—Interest—Meaning of*

There is nothing in S. 174 (1) of the Bengal Tenancy Act to indicate that the interest of the person, who makes the application for setting aside the sale, must be in existence at the date of the sale. The sole criterion for determining whether a person's interest is affected by the sale is to find out whether his interest will be affected if the sale be ultimately confirmed. Under S 159 of the Bengal Tenancy Act, a purchaser at a rent sale gets his title from the date of the confirmation of the sale, and not from the date of the sale, as in a sale under C.P. Code. The judgment of the High

**BENGAL TENANCY ACT (1885) S. 174**

therefore, a subsisting interest between the date of the sale and the date of the confirmation of the sale. The purchaser from the judgment debtor after the date of the sale and before the confirmation of the sale, therefore, acquires the subsisting interest of the judgment-debtor and has *locus standi* to get the sale set aside under S 174 (1) of t

SUSHIL KUMAR

CHATTERJI

189 IC 203 =

S 174 (3) (b)

amount fixed in order  
Court—C P Code, S 148

The Court which passes an order under S 174 (3) (b) of the B T Act that the application of the judgment debtor to have the sale set aside will be allowed on

above case. That section only authorises an enlargement of time in respect of acts prescribed or allowed by Code. Further it does not apply in the case of a decree or order of a final character made by a Court, but applies only to acts preliminary to or during the course of the trial of a case before the final order has been made (*Edgley, J*) *Haji Eakur Sheik v Samjan Bibi* 188 IC 661—13 RC 16—

44 CWN 449—AIR 1940 Cal 275

S 182—Tenant of homestead subsequently acquiring riyats right in contiguous village—If acquires riyats right in homestead land

If a person who subsequently acquires riyats right in contiguous village, the Act are attracted to homestead land the agricultural tenancy village is held at the time is created (*Sen, J*) *A' Nath*. 44

S 184 (1)—Questions of pleadings—When may r 1939 Dig, Col 71 *BAJI OF BENGAL*

**BENGAL VILLAGE**

OF 1870, S 34—Scope—Warrant for attachment for

**BENGAL VILLAGE SELF GOVERNMENT ACT (V OF 1919) S 16—Removal of Chairman of Union Board—Jurisdiction of Civil Court—Bengal Local**

jurisdiction the Civil Court has jurisdiction to grant the plaintiff a declaration in his favour. There is nothing

**BERAR INAM RULES (1859)**

in S 120 of the Bengal Local Self Government Act to suggest that the ordinary jurisdiction of the Courts to give the plaintiff a declaration to which he is entitled has been taken away (*Henderson, J*) *DISTRICT BOARD CHITTAGONG v EMDADAL HOQUE*.

188 IC 705—13 RC 23—44 CWN 362 =

R 1940 Cal 305

OF 1934, S 70—  
Bengal See 1939  
WAKFS, BENGAL  
185 IC 438 =  
12 RC 366

S 73—Applicability—Suits by Commissioner and by other persons—Necessity for obtaining leave

S 73 (1) of the Bengal Wakf Act applies not to suits strictly within and S 92, Civil Court or the Wakf Court or the most obtain the to the leave of *Ameer Ali, J*)  
14 CWN 969

**BERAR ALIENATED VILLAGES TENANCY**

LAW S 22—Right of hypothecation limits See 1938 Dig, Col 110 *RAMCHANDRA GOVIND KALE v NISHRIMAL CHANDANNAL*

ILR (1940) Nag 493

S 76 (3)—Suit for arrears of rent due by ante of 111  
NDAN  
g 493  
(3)—

ILR (1940) Nag 493—AIR 1940 Nag 385

R 56 (3)—Who are all affected by  
R (3) to R 56 of the Berar Cotton Market

broker. A firm or a registered company would also seem to be included in the word 'person' (*Niyogi, J*) *CHIRANJI MOTILAL v COTTON MARKET COMMITTEE* 188 IC 77—12 RC 315 =  
940 Nag 226

amount of share  
voluntarily  
Inam certifi  
cate amounts to a distinct and independent grant it will on failure of heirs of the grantee, escheat to Govern-

## BERAR INAM RULES (1859)

ment that if it is merely one carved out of a major grant it would revert back to the major grant and merge in it. (*Stone, C J and Nagari J*) **SHIRAM DEORAO v. BANYA BAI** I L R (1910) Nag 244—

1910 N L J 78—A I R 1910 Nag 129

—Nature of Inam estates in Berar—Alienability—*Onus* See 1939 D J Col 71 **MAHADEO BHAGWAN**

—17 D J C 111—V V D J Nagari J 20—

—R VI Cl (4)—Interpretation—Grant in return for services—Services ceasing to be rendered—Continuing of service grant by Inam Commissioner—Nature of Estate granted to Inamdar See 1938 Dig, Col 112 **DIGAMBAR v. KISHANDAS GOVERDHANDAS**

I L R, (1910) Nag 534

## BERAR LAND REVENUE CODE (1)

Scope of—Status of ante alienation tenant Requirer

S 72 of the Berar Land Revenue Code the land must have been held on a rent equal with the fair assessment 'Equal' cannot mean approximately equal In order to status as an ante alienation tenant, a tenant that what he has to pay does not depend of the landlord but what the government be the fair assessment at each successive settlement An approximation to the fair assessment due to the leniency of a Jagirdar who may rack-rent his tenants cannot give the tenant a right to claim a status to which he is not otherwise entitled (*Griffin, J*) **SYED**

mon in dispute about a right of way—Order by Tahsil

Sub-Divisional Officer and decided the matter was then taken up in due course to the Commissioner and local Government it was held that the starting point of limitation for filing civil suit was the date on which the Sub-Divisional Officer passed his orders and not the date

—S 141 (c)—Applicability—Alienated holding

The process in S 141 (c) is applicable to any holding in respect of an arrear of land revenue due upon it In cl (f) alienated holdings are referred to The fact that in cl (f) a special process is prescribed exclusively for alienated holdings does not imply that the general process provided in S 141 (c) is not applicable to an alienated holding Further alienated holdings are not excluded from the definition of holdings in S 2 (5) of

## BERAR PATELS AND PATWARIS LAW (1900), S 8

the Code (*Burton F B*) **HARIBHAN SONAJI v. SAMPATLAL** 1910 N L J 625

—S 156—A tachment not effect as required by S 145 (2) of the Revenue Code—Objection if often—Absence of prejudice—Sale, if should be set aside

The objection that the attachment of the survey number was not effect as required by S 145 (2) of Rev.

Code inasmuch as publishing or not be raised by the sale Further is no substance **OPAL HARDE v. 1940 N L J 424** *is there in one lot—*

aspect of several are liable to sale

under S 141 (c) of the Berar Land Revenue Code a sale of all of them in one lot in order to obtain a better price is not illegal (*Burton, F C*) **RANGOPAL HARDE v. SYED KARIMUDDIN** 1940 N L J 424,

—S 192 (1) proviso—Construction—Suit involving question of interpretation of sanal—Jurisdic

## BERAR PATELS AND PATWARIS LAW (1900), S 5 (3) and (4)—Appointment of patwari—Preference—Nearness by inheritance and educational qualification

The provisions of S 5 (3) and (4) of the Patels and Patwaris Law do not require that the person having the preferential claim by inheritance to the post of patwari must be appointed and relieved from the obligation of personal service, in preference to a person having a more distant claim by inheritance and being qualified

A person who is under S 21 of nal service under is not by reason of the required (*C*) **BHAGWANT 1940 N L J 621**

—S 8 (4)—R (x), of Rules framed under the Act—Nomination of substitute—Procedure—Deputy Commissioner, when can select and appoint—Malik Patwari's power, if affected by the absence of members of the family

It is only when the Malik Patwari refuses or fails to nominate a substitute or the Deputy Commissioner does not approve of such a nomination, that the Deputy Commissioner gets the power of selection and nomination R (x) of the rules framed under S 21 of the Act requires the principal to nominate a member of his family or of the sub division of his family But it does not follow that in the absence of any such persons, the principal's right to nominate a substitute is lost, (*Burton F C*) **GOVIND BALKRISHNA v. VITHAL VINAYAK** 1940 N L J 120

—S 8 (4) and R. XII (iii)—Appointment under S 8 (4) if falls within scope of R XII (ii)—

## BERAR PATELS AND PATWARIS LAW (1900), BHOPAL C. P. CODE (1908), S. 106/1.

S 15

Son of a lunatic I substitute.

Any appointment Berar Patels and

—Ss 27, 58 and 2 (8)—Suits on basis of foreign unobtainability—Suits

Indian Court, the examination absented

Malik Patel, I cannot apply to is to get his Patel, making (Greenfield)

—S 15—  
to dismissal

An enquiry under S 15 of the Berar Patels and Patwari have a and the Judicial EKOB4

a suit in the plaintiff on the Court by the British C. P. Code 2 (8) Bhopal decree, and is passed ex parte on merits, (3) that the suit to recover costs on the British Indian Bhopal C. P. Code. P.C. Birdie, J) 187 I C. 439

—Appraisability—

Test—Order confirming sale—Appraisal of list

In order to decide whether a determination of a question arising in execution proceedings is appealable as a decree or not, one must look to the combined effect of S 47 and S 2 (2), C. P. Code, only such questions as relate to the rights and liabilities of the parties with reference to the relief granted by the decree are properly within the scope of S 47 (58 Bhopal), of the Code, but orders that are merely incidental and relate to the proceedings are not within the orders fixing the date of any proceedings, or even refusing sale are merely interlocutory and hence not appealable. An order confirming the sale held nearly two years back on the ground that all the property sold (Mahomed Ahmad Khan, C. J. and Birdie, J) BINDRABANDAS v NANNAY 190 I C 174.

comes before Collector to consider the objections and whether the final bid is to be accepted, he simply adjourns it without accepting the bid, the Deputy Commissioner in appeal has no power at that stage to raise the bid and direct a sale. It is for the Collector to accept the bid first (Burton, J SETH MISHRILAL

BERAR REVENUE BOOK  
Collector proceeding—Acceptance

There is neither ground nor authority for the view that no appeal lies under F III 8 (Bn

—R 1  
Acceptance  
lector

Where a suit is filed by a Collector, R 11 (ii) of Berar Revenue Book Circular III-8 requires that the sale shall be adjourned to the

property sold (Mahomed Ahmad Khan, C. J. and Birdie, J) BINDRABANDAS v NANNAY

27—Suits on basis of foreign judgments—Maintainability. See BHOPAL 2 AND 58 187 I C 439.

## BHOPAL ACTS

Civil Procedure Code  
Court-Fees Act  
Criminal Procedure Code  
Limitation Act  
Small Cause Courts Act

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**BHOPAL CRIMINAL PROCEDURE CODE, Ss.**232 3—*Retracted statement—Evidential value of*

S 288, Cr. P. Code (=232/3 Bhopal) gives full discretion to the presiding Judge to treat a previous statement made by a witness before the committing Court as evidence in the case "for all purposes", which means that even the Judge based on such statement may forget that admission of evidence is one thing and another. Art 188 under S 288, Cr. P. Code, value may vary of each case.

J) RAISUDDIN L. GOVERNMENT OF BHOPAL  
190 IC 322

**BHOPAL LIMITATION ACT, S 20—***Execution petition—Decree holder mentioning payments by judgment debtor and producing writing signed by him—If sufficient certification—Extension of time—C. P. Code, O. 21, R. 2*

Where the decree-holder has mentioned three conse-

**BHOPAL S.M.C COURTS ACT.**

Birdi, J.) PEARE LAL v. RATAN LAL.

189 IC 802.

—Art 67 and S 19—"Account stated" and acknowledgment—Distinction between

PEARE LAL v. RATAN LAL. 189 IC 802.

—Arts 121 and 139—Applicability—Mortgage—Suit for sale or foreclosure. See 188 IC 669.

—Arts 137 and 40—Scope—Suit to recover property given for sale on commission basis—Article applicable.

A suit for the recovery of a philatelic album given to the defendant for commissioning a sale on commission

—Art 67—"Account stated"—Meaning of—Some items time-barred—Effect.

The defendant in the case of a suit for evidence

—Arts 139 and 121—Applicability—Mortgage—Suit for sale or foreclosure.

Art 121 o

100 1000.

**SE COURTS ACT—Jurisdiction—Suit for accounts—gent for value of tickets used for by him—If cogni-**

Act excludes from its purview of accounts between parties of such a suit is that it is for a decree for a fixed

under the transaction would take the form of a new sum of money, but only wants rendition of account by

viewed by an express promise to pay, in the same manner in settling an outstanding account the debtor may accept liability as to the balance found due, in respect of even time-barred items, and consequently give cause of action from the date of such account. In the circumstances, it becomes impossible to give such a mutual settlement as long as its character is beyond reproach. (Mahomed Ahmad Khan)

character merely because the defendant has chosen to raise a plea of account. Even if the Court has to go into the parties' account to a certain extent the jurisdiction is not barred. (Mahomed Ahmad Khan)

**BHOPALSM O COURTS ACT, S 11.**

(*Mohammad Ahmad Khan, C J*) **ISHAQUE ALI v. ABDUS SAMAD** 187 IC 480

—S 11—*Review—Deposit or furnishing of security*

It is not necessary to deposit or furnish security in order to prevent a sale of property.

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**B & O CO OPERATIVE SOCIETIES ACT (1935), S 57**

registrar binding on all the creditors or the class of creditors, as the case may be and also on the Co-opera-

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**BHOPAL TRANSFER OF PROPERTY ACT,**

S 58—*Document disclosing usufructuary mortgage—Possession not delivered—Nature of mortgage*

Where a document discloses a usufructuary mortgage without a personal covenant of any sort made for the payment of the mortgage money, and the transaction is accompanied by actual delivery of possession of the mortgaged property then the mortgagee has no remedy in law to sue for his money or for sale or foreclosure so long as the security remains in tact and within his hands. But the position becomes quite different when no possession as stipulated is given to the mortgagee. In that case the mortgage is neither usufructuary nor anomalous but has the same effect and is subject to the same legal

not operating as a bar to the passing of the decree, is a clear bar to execution (*Harris, C J and Dhavle, J*) **BUXAR CENTRAL CO OPERATIVE BANK, LTD v AKHOURI BINDHYACHAL PRASAD**

185 IC 606—6 BR 222—12 RP 387—21 PLT 173—A IE 1940 Pat 261

—S 48—*Jurisdiction of Registrar—"Dispute"—Prior award under Act of 1912—Second award under new Act in respect of same debt—If a nullity and with out jurisdiction—C.P Code, S 11.*

The expression 'dispute' in Expl I to S 48 of the Co-operative Societies Act is used in a very special sense. There may be a dispute under the section even when the claim is admitted. There is nothing to

second award cannot on that ground be held to be a

**Bihar Local Self Government Act (III of 1885)**

**Bihar Municipal Act (II of 1913)**

**Bihar Municipal Act (VII of 1922)**

**Bihar Public Demands Recovery Act (IV of 1914)**

**Bihar Village Administration Act (III of 1922),**

**Bihar Money lenders Act (III of 1938)**

**Bihar Money lenders Act (VII of 1939)**

**Bihar Restoration of Bakasht Lands and Redemption of Arrears of Rent Act (IX of 1938)**

**Bihar Tenancy Act (VII of 1885)**

**BIHAR AND ORISSA CO OPERATIVE SOCIETIES ACT (VI OF 1935) S**

*promise pending suit by depositor not party to compromise—Right of*

S 24-A (2) of the Bihar and Orissa Co-operative Societies Act makes a scheme of by the specified majority, if sanc

—S 57 (2)—*Applicability and scope—"Touching the affairs of the Society"—Decree for costs against Co-operative Society—Execution in Civil Court—Leave of Registrar—Necessity for—S 57 (1)*

S 57 (2) of the Bihar and Orissa Co-operative Societies Act imposes a bar to certain proceedings in the case of a Co-operative Society in liquidation, i.e., on any matter touching the affairs of the Society. The



# B & O CO-OPERATIVE SOCIETIES ACT (1935), S 63

barred except by leave of the Registrar. An application to execute a decree for costs against a Society can there fore lie only with the leave of the Registrar under S 57 (2).

*Roulund, J—(Quære)* Whether such an execution

—S  
member of  
There ca

63 of the Co operative Societies Ac  
son from whom a debt is due

joint Hindu family which owns several buildings within

*Hindu family*

A joint Hindu family is a 'person' within the m  
ing of Cl (d) of Sub S (3) of S 118 C of the I  
and Orissa Local Self Government Act (*Agarwala*

1913) Ss 6 and 16—*Sabarkars*—Status of—If tenure  
holders—Liability to pay transfer fee to landlord—  
Amount of fee

# B & O MUNICIPAL ACT (1922), S 282

*vires (Harris, C J and Wort, J)* COMMISSIONERS  
OF THE ARRAH MUNICIPALITY v INDER CHAND

19 Pat 485=187 IC 701=6 BR 532=

12 RP 626=21 Pat LT 283=1940 PWN 869=

A LE 1940 Pat 549

—S 115 (2)—*Applicability—Illegal enforcement  
of assessment—If can be looked into in revision of assess  
ment as legal—Notice—Necessity*

Where an original assessment is illegal by reason of  
the assessee not having been given an opportunity of  
presenting his case it must be wiped out of considera-

Act (*Harris C J*)  
COMMISSIONERS OF

180 IC 792=

593=6 Out LT 9=

A LE 1940 Pat 583.

1—*Applicability—Amendment of*

opportunity then the assessment is clearly illegal and  
*ultra vires* and the increased amount collected by the  
Municipality cannot be retained (*Harris, C J*)  
PANCHANAN MUKERJI v THE COMMISSIONERS OF  
CUTTACK MUNICIPALITY

21 Pat LT 593=6 Out LT 9=

A LE 1940 Pat 583

(1) and  
it's shop—  
annual fee r  
of drug-

gist's shop registered prior to amendment to pay annual  
license fee—*Amendment—If ultra vires*

Under S 282 (1) of the Bihar and Orissa Municipa

**B & O MUNICIPAL ACT (1922), S 354**

(*Harris, C. J. and Fazl Ali, J.*) **CUTTACK MUNICIPALITY v. SURENDRA NATH SAHU**

21 Pat L.T. 713—A.I.R. 1940 Pat 700.

—S 354—*Applicability—Resolutions under S 259 (1) and (3) fixing local limits and requiring licences for mills—Order requiring licences and fixing fees—If rules or bye laws—Confirmation by Government—Necessity.*

The fixing of local limits under S 259 (1) of the Bihar and Orissa Municipal A  
It is more of the nature  
of the Act Resolution  
missioners under S 25  
fixing local limits and  
surkhi mills and fixing  
S 354 Therefore  
working such mills and  
rules requiring confirm-  
tion precedent to their t  
Act Nor are they bre-l.  
PUR MUNICIPALITY v  
185 I C 630—  
1

**BIHAR AND ORISSA RECOVERY ACT**

*under—Doctrine of Karta of joint family—*

The karta of a joint family even although not expressly named as such The

—S 8 (b)—*Scope and effect comes into force—Sale of property mortgage decree after service of n proceedings—Subsequent certificate merely money decree sale*

The charge provided by S 8 (b)

cannot, by reason of his pious obligation, successfully impugn a sale of the family property by the father to discharge his own debts provided they are not *avyavaharika*, the fa  
perty including the  
such debts, or la;  
proceedings for their  
father cannot pass to  
right, title and interest

Y. D. 1940—7

**B & O. VILL. ADM. ACT (1922), S 53**

cate holder under S. 26 (1) of the Public Demands Recovery Act is in a different position from that of a holder of a decree against a Hindu father. A sale held at his instance can only pass to the certificate purchaser the right, title and interest of the certificate debtor. This does not and cannot include the father's qualified power to dispose of the son's interest in the joint family property. (*Harris, C J, Dhole and Afanskar Lall, JJ.*) **HARI PRASAD SINGH v. LAL**

—S 52—*Scope—Death of debtor after notice and to legal representatives—*

officer's jurisdiction to sell recovery Act is founded in a ot on the actual existence

if. A notice to the legal

*Proper procedure*

S. 68 of the Bihar and Orissa Village Administration Act does not empower a Union Board or Panchayat to

## BIHAR MONEY LENDERS ACT (1938), S 7

BIHAR MONEY LENDERS ACT (III OF 1938),  
S 7—*Applicability to period after date of suit*

The rule of Damdupat introduced by S 7 of the Bihar Money Lenders Act is restricted to the period preceding the institution of the suit and does not apply to the period subsequent to the institution of the suit (*Agarwala and Rowland J.J.*) RAM SARUP SAH v MUKHI SINGH 187 IC 132=12 RP 564=6 BE 430=AIR 1910 Pat 546

S 8—*Discretion—Interference*

Where the Court of appeal below statutory discretion in the matter of to the date of institution of the suit High Court in second appeal to pass a judgment in respect of interest subsequent to suit (*Agarwala and Rowland, J.J.*) RAM SARUP SAH v MUKHI SINGH 187 IC 132=12 RP 564=6 BE 430=AIR 1910 Pat 546

S 8—*Reduction of interest—Discretion of Court*

There is nothing in S Act, 1938, to indicate case its discretion in favour of the debtor in every case

SARWAN CHAUDHURY 6 BE 389=186 IC 438=12 BE 501=AIR 1910 Pat 423

S 11—*Appeal—Order determining instalments*  
—*Appellability—C P Code S 47*

TAN

S 11—*Applicability—Purchase property—Right to apply*

S 11 of the Bihar Money Lenders Act the benefit of all judgment-debtors

## BIHAR MONEY-LENDERS ACT (1938), S 16

der S 11 for payment of decretal its can be made at any time between fixing of execution and the date. Therefore the fact that the application properties are going to be sold was passed is no reason for the

Court to decline to consider the merits of the case (*Wort and Meredith, J.J.*) VISHANATH KUMARI v SONU LAL 189 IC 244=13 BE 65=6 BE 775=21 Pat LT 678=1940 P.W.N 712=AIR 1940 Pat 352

S 11—*Discretion of Court under—Circumstances to be considered in fixing and ordering instalments*

the judgment-debtor to pay the instalments but the Court is also required to take into consideration the amount of the decree and the circumstances of the judgment debtor. If after taking into account the various circumstances mentioned, it appears to the

S 11—*Scope—Appellate Court—Power to reduce interest in the absence of appeal as to amount decreed for principal and interest*

S 11 of the Bihar Money Lenders Act is clear and

S 10—*Order relating to S 11—If can be dealt with*

An appeal lies to the Federal Court from an order of the High Court under S 16 of the Act of 1938 (now S 13 of the Act of 1939), and in

him, he is a judgment-debtor and as such he is entitled to the protection afforded by S 11 (*Fazl Ali and Meredith J.J.*) LAL PARI v JANAI RAI 1940 P.W.N 750=AIR 1940 Pat 718

S 11—*Application under—When to be made*

BIHAR M. L. (REG. OF TRANS) ACT, (1939).

BIHAR M. L. (REG OF TRANS) ACT (1939),

this appeal the order of the High Court so far as it relates to S 11 of S 7 of the Act of 1939) (Guzer, C.J., Sulaiman as RAMANANDAN PRASAD NA WANG MADHUKAND RAMTI

S 7.

185 IC 1=

Dig Col 75 SHYAMKANT LAL v RAMBHAJAN SINGH 71 O L J 369

—S 2—'Debtor'—If includes judgment-debtor.

The word 'debtor' is used in the Bihar Money Lenders Act in a wide sense and would include a judgment debtor (*East Ali and Meredith, JJ*) LAL PARI v. JANKI RAI 1940 P W N 750 = A L B 1940 Pat 718

—S 2 (f) (2)—'Bond'—Meaning of—Balance entries in accounts signed by debtor

Per Sulaiman, J.—An instrument cannot be a 'bond' as it is understood in India unless it contains an

recovered on account of interest for the period preceding the institution of the suit (*Harries, C J, and Manohar Lal, JJ*) HANUMAN SINGH v GAYA SINGH 21 Pat L T. 826

—S 7—Construction — "Based on Document" Meaning of

S 7 deals with two kinds of loans—a loan advanced and a loan based on a document Under the second heading it takes into consideration two kinds of documents on which loan may be based—one kind may evidence the loan and the other which may not evidence the loan, but may be utilized to find out the amount

document in the expression be used in two different a loan and in another case the section cannot be interpreted

entries in accounts even though signed by the debtor are not sufficient to constitute a 'bond' as it is understood in India unless it contains an

ment'—Meaning of.

lenced by such document every case, look to is based in order to loan is based upon a

show a promise or undertaking to pay before the loan is said to be a "bond". The mere men being payable at a particular rate and plication therefrom of a promise to pa

is a Court must refer to them for find out what the loan was in rule of damdupat adopted by the limitations provided by the Act, (*Har Lal, JJ*) SINGHESHWAR RASAD 187 IC 339 = 6 B B. 453 = A L B 1940 Pat 65

—S 7—Applicability—Mortgage suit—Preliminary decree passed before Act

—S 7—Co-debtors—Suit against one to enforce his share of liability only—Maximum amount of

nt is liable int of loan amount of under S 7 suit against portion of expression it" in that

1939 and it is only the final passed The opening words of standing anything to the co other law or in anything having any agreement," have little to cedure. (*Dharcie, J*) CH

## BIHAR MONEY-LENDERS ACT (1938), S 7

A.I.R. 1940 Pat 184  
**BIHAR MONEY LENDERS ACT (III OF 1938),**  
**S 7—Applicability to period after date of suit**

The rule of Damdupat introduced by S 7 of the Bihar Money Lenders Act is restricted to the period preceding the institution of the suit and does not apply to the period subsequent to the institution of the suit (*Agarwala and Rowland, JJ*) RAM SARUP SAH v MUKHI SINGH 187 IC 132=12 RP 564=6 B.R. 430=A.I.R. 1940 Pat 546

—S 8—Discretion—Interference in second appeal  
 Where the Court of appeal below fails to exercise its statutory discretion in the matter of interest subsequent to the date of institution of the suit, it is open to the High Court in second appeal to pass necessary orders in respect of interest subsequent to (Agarwala and Rowland, JJ) RAM SARUP SAH v MUKHI SINGH 187 IC 132=12 RP 564=6 B.R. 430=A.I.R. 1940 Pat 546

—S 8—Retention of interest—Discretion of Court

There is Act, 1938, case its discri

JANKI AR CHAUDHARI v. S. K. SINGH 187 IC 132=12 RP 501=A.I.R. 1940 Pat 423

—S 11—Appeal—Order determining instalment  
 —Appellability—C.P. Code S 47  
 An order determining instalments under

Judgment-debtor should be given time to pay and the decree holder restrained from exercising the he has under the law to execute his decree

—S 11—Applicability—Purchaser of property—Right to apply

S 11 of the Bihar Money Lenders Act is the benefit of all judgment-debtors. That section is not confined only to a mortgage cannot be denied to a purchaser of the equity in mortgaged property. If such purchaser is in a mortgage suit and a decree against him, he is a judgment-debtor and as such he is entitled to the protection afforded by S 11 (*Fazl Ali and Meredith JJ*) LAL PARI v JANKI RAI 1940 P.W.N. 750=A.I.R. 1940 Pat 718

—S 11—Application under—When to be made

## BIHAR MONEY-LENDERS ACT (1938), S 16

An application under S 11 for payment of decretal amount by instalments can be made at any time between the date of the first levying of execution and the date fixed for the sale. Therefore the fact that the application is made only when properties are going to be sold and not when decree was passed is no reason for the Court to decline to consider the merits of the case (*Wort and Meredith, JJ*) VISHANATH HUMARI v SONU LAL 189 IC 244=13 R.P. 65=6 B.R. 775=21 Pat LT 678=1940 P.W.N. 712=A.I.R. 1940 Pat 352

—S 11—Discretion of Court under—Circumstances to be considered in fixing and ordering instalments

The power conferred on the executing Court by S 11 of the Bihar Money Lenders Act is a discretion which the Court may exercise in derogation of the rights of the decree holder to execute the whole of his decree immediately against the judgment-debtor. The Court is no doubt required to take into consideration the capacity of the judgment-debtor to pay the instalments, but the Court is also required to take into consideration the amount of the decree and the circumstances of the judgment-debtor. If after taking into account the various circumstances mentioned it appears to the

—S 11—Scope—Appellate Court—Power to reduce interest in the absence of appeal as to amount decreed for

interest (*Agarwala and Rowland JJ*)  
 SAH v MUKHI SINGH 187 IC 132=564=6 B.R. 430=A.I.R. 1940 Pat 546

—S 12—Exercise of powers—Discretion of Court  
 The word 'may' in the opening portion of S 12 of the

S 16—Order relating to S 11—If can be dealt with

An appeal lies to the Federal Court from an order of the High Court under S 16 of the Act of 1938 (now S 13 of the Act of 1939), and in

## BIHAR M L (REG OF TRANS) ACT, (1939)

this appeal the order of the High Court so far as it relates to S 11 of the Act of 1938 (now S 7 of the Act of 1939) can also be dealt with (Gwyer, C.J., Sulaiman and Varadachariar, JJ) RAMANANDAN PRASAD NARAIN SINGH v GOSHI WAMI MADHWANAND KAMHI 185 I C 1=

## —S 2—Debtor—If includes judgment debtor

The word 'debtor' is used in the Bihar Money Lenders Act in a wide sense and would include a judgment debtor (Faiz Ali and Meredith JJ) LAL PARI v JANKI RAI 1940 P W N 750=

A I R 1940 Pat 718

## —S 2 (f) (2)—Bond—Meaning of—Balance entries in accounts signed by debtor

Per Sulaiman J.—An instrument cannot be a bond as it is understood in India unless it contains an

entries in accounts even though signed by the debtor are not comprised in the expression 'transaction on a bond' used in that section. It is at least necessary that the document relied on should have been intended to embody the contract between the parties and should *ex facie* show a promise or undertaking to pay said to be a 'bond'. The mere men being payable at a particular rate and plication therefrom of a promise to pa would not suffice to bring an entry in ar the category of 'bond' (Gwyer C J Varadachariar JJ) SURENDRA P F SINGH

## —S 7—Applicability—Mortgage suit—Preliminary decree passed before Act

## BIHAR M L (REG OF TRANS) ACT (1939),

S 7

NANDKISHEN PRASAD 6 B R 367=186 I C 401=12 R P 500=A I R 1910 Pat 376

## —S 7—Applicability and scope—If governs entire Act

S 7 of the Bihar Lenders Act of 1939, which forbids the Court from passing a decree for an amount of

## Lall JJ) HANUMAN SINGH v GAYA SINGH

21 Pat LT 826

## —S 7—Construction—"Based on document" Meaning of

S 7 deals with two kinds of loans—a loan advanced and a loan based on a document. Under the second heading it takes into consideration two kinds of documents on which loan may be based—one kind may evidence the loan and the other which may not evidence the loan, but may be utilized to find out the amount

in the expression ed in two different and in another case tion cannot be inter ame document may l'arma and Manohar SINGH v MEDNI 339=12 R P 582= A I R 1940 Pat 65 ned by such docu-

## ment"—Meaning of

The meaning of the words 'evidenced by such document' is that the Court should in every case look to the document on which the loan is based in order to find out the loan advanced. If the loan is based upon a

ss a Court must refer to them for to find out what the loan was in ulation of damdupat adopted by the limitations provided by the Act (Lall JJ) SINGHESHWAR RASAD 187 I C 339= 6 B R 453=A I R 1910 Pat 65

## —S 7—Co-debtors—Suit against one to enforce his share of liability only—Maximum amount of

## BIHAR M L (REG OF TRANS) ACT (1939),

S 7

12 R F C 23=6 B R 517=1940 O L R 286=

52 L W 124=1940 P W N 622=

1940 M W N 916=72 C L J 144=

44 C W N 27 (F R)=21 P L T 815=

A I R 1940 F C 19=(1940) 1 M L J (Supp.) 21

—S 7—'Document on which the loan was based'

—Accounts settled every year and balance signed by

debtor—Suit for amount shown in final entry and

amt

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file

thereon till date of suit

*Held per curiam*—That the Chitta of 1929 was not

a 'document on which the loan was based' within the

meaning of S 7 of the Bihar Mon

and consequently under the said

no power to pass a decree for mor

amount of Rs 3700

*Per Varadachariar J*—Even if it were possible to

regard the accounts in this case as the document on

which the loan is based the accounts must be taken as a

whole and the loan cannot be said to be based on the

last entry alone (*Gwyer C J Sulaiman and Varada-**chariari JJ*) SURENDRA PRASAD NARAIN SINGH

v GAJADHAR PRASAD 3 F L J 27=

I L R 1940 Kar (F C) 14=187 I C 612=

12 R F C 25=6 B E 508=1940 O L R 275=

71 C L J 557=1940 M W N 686=

1940 P W N 542=21 P L T 753=

44 C W N (F R) 1=A I R 1940 F C 10=

1940 1 M L J (Supp.) 1

—Ss 7 and 2 (f)—'Loan'—'Meaning of'—'In-

rest whether loan'

*Sulaiman J*—'Loan' as defined in S 2 (f) of the

Bihar Money Lenders Act, 1939 is a wider word than

the principal amount actually lent as it may be an

## BIHAR M L (REG OF TRANS) ACT (1939),

S 9

71 C L J 557=1940 M W N 686=

1940 P W N 542=21 P L T 753=

44 C W N (F R) 1=A I R 1940 F C 10=

(1940) 1 M L J (Supp.) 1.

—S 7—"Loan"—Settlement of accounts by borro-

wing afresh—Nature of

*Varadachariar J*—Whatever may be the case with

regard to ordinary "renewals", where the parties settle

accounts in a new account

# BIHAR M. L. (REG OF TRANS) ACT (1939), S 11

(*Harrit, C J and Manohar Lall, J*) HANUMAN SINGH v GAYA SINGH 21 Pat.L.T 828

—S 11—Decree—Application for payment in instalments—Power of Court to grant See BIHAR MONEY-LENDERS ACT (1938) S 15

21 Pat.L.T 255

—Ss 13 and 14—Applicability—Mortgage decrees See 1939 Dig, Col 75 RAZIA BEGUM v KRISHNADEO NARAYAN A.I.R. 1940 Pat 17

—Ss 13 and 14—Applicability—Sale confirmed before Act

There is nothing in either the Bihar Money Lenders (Regulation of Transactions) Act, 1939 or the Bihar Money Lenders Act 1938 to express the intention of the Legislature to invalidate a completed sale which was otherwise good. If therefore the order confirming an execution sale was passed before either of the Acts were enacted the provisions of Ss 13 and 14 of the Act of 1939 cannot operate to invalidate the sale. In order that these sections may be applicable it is necessary that the execution should be still pending and the execution is complete on the sale being

(*Chatterji, J J*) RAZIA NARAIN MAHTHA

6 B.E. 177-21 P.L.T.

—Ss 13 and 14—Applicability and scope—Purchaser of mortgaged property impleaded in suit on mortgage—Decree—Right to apply under S 13

A purchaser of mortgaged property who is impleaded

estimate the value of the property as well as the decree holder S 14 of dependent on S 13 (*Fa i Ali*) TAL PARI v JANKI RAI

A.I.R. 1940 Pat 718

—Ss 13 and 14—If retrospective See 1939 Dig Col 76 SHYAMKANT LAL v RAMBHAJAN SINGH 71 C.L.J. 369

—Ss 13 and 14—If retrospective—Power of Federal Court—Relief under new Act—Formal application by judgment debtor—If necessary

The Bihar Money Lenders (Regulation of Transactions) Act 1939, is retrospective and the Court has power to make such an order on an appeal as the Court

—S 13—Proclamation of sale not issued before Act coming into force—Rights given by section—If can be availed of See 1939 Dig Col 75 SHYAMKANT LAL v RAMBHAJAN SINGH 71 C.L.J. 369

—S 13—Retrospective operation—Pending proceedings—If affected—Rejection under S 16—Appeal—Amending Act into force pending appeal—Effect place before hearing of appeal—Effect parties to appeal See 1939 Dig, C

# BIHAR TENANCY ACT (1885), S 20

SINGH v PALAKDHARI SINGH 185 I.C. 129-12 R.P. 304-21 P.L.T. 818

—S 13—Scope—If repugnant to O 21 R. 66, C.P. Code, as amended by Patna High Court See 1939 Dig Col 76 SHYAMKANT LAL v RAMBHAJAN SINGH 71 C.L.J. 369

—S 13—Validity

Section 13 of the Bihar Money Lenders (Regulation of Transactions) Act, 1939, which re-enacts S 16 of the Act of the previous year, can not now be questioned in any Court since the Act of 1939 has received the assent of the Governor General (*Gwyer, C.J., Sulaiman and Varadachariar, JJ*) RAM PRATAPJI v HARI KISHAN DOSS 185 I.C. 4=12 R.F.C. 15=6 B.R. 172 (1)=71 C.L.J. 84

—S 15—Scope—Power of Court—Application for instalments in payment of decree amount—Maintainability

Both under S 15 of the Bihar Money Lenders Act of 1938 and under S 11 of the new Act of 1939 a Court has jurisdiction to consider the question whether the

# BIHAR RESTORATION OF BAKASHT LANDS AND REDUCTION OF ARREARS OF RENT ACT (IX OF 1938) S 15—Applicability to execution proceedings See 1939 Dig Col 76 RAZIAUR

landlord and tenant Under S 12 of the Bihar Tenancy Act a transfer is complete as soon as the deed of transfer is registered and the necessary notice given. The relationship of landlord and tenant ceases from the moment the deed of transfer is registered, and the transferor is no longer liable to pay the rent (*Manohar Lall and Chatterji, JJ*) KAPILSWAR MISHRA v SANTI NAYAK 21 Pat.L.T. 891

—S 15—Scope—Non-compliance—Effect—If

co sharer in good faith—Acquiescence by other co sharer—Rajyat, if can acquire occupancy right

If in the ordinary course of management one of two co-sharers settles land in good faith and



## BIHAR TENANCY ACT (1885), S 21

operation of Ss 20 and 21 of the Bihar Tenancy Act, and under S 25 of that Act, he cannot be ejected except on the conditions prescribed by that section (*James and Chatterji, JJ*)  
 RAMASRAY PRASAD CHAUDHURY v RAMSURAT SINGH  
 6 BR 84=184 IC 838=  
 12 RP 282=21 Pat LT 181=  
 AIR 1940 Pat 131

—S 21—Cultivating lease—Lease to settled raiyat of kharbaur and khudkasht land fixing annual jama payable to landlord—Tenant entitled to remain in possession and occupation till term of lease appropriate produce—Clause that tenant to be

6 BR 313=12 RP 463

—(before amendment of 1907) S 22(2)—Co-owner purchasing occupancy right—Right to retain possession after allotment of land to other co-sharer by partition

AIR 1940 Pat 467 (P B)

the other co-proprietors as  
 Agarwala and Manohar L  
 LACHHMI TEWARI  
 13 RP 113=6 B.  
 21 PLT 667

—(before amendm  
 Scope and effect of—P  
 occupancy right—Only occ  
 and not all tenancy rights

The effect of the purchase by one of the co-owners of land of an occupancy right is not that the tenancy

—(as amended in 1907), S 22 (2)—Scope—

—S 22(3)—Construction—Occupancy  
 Purchase by thicadar—Effect—Thicadar sell  
 to co-sharer landlord—Rights and status of  
 can resist claim of other co-sharers to share  
 tion

## BIHAR TENANCY ACT (1885), S 53

Where a thicadar purchases an occupancy holding during the period of his lease, he becomes a non occupancy raiyat in respect of the holding so purchased, as it is well-settled that land held in non occupancy right is not ordinarily transferable a vendee from the thicadar purchaser cannot acquire either non-occupancy or occupancy rights in the lands though the vendee from the thicadar is a co-sharer landlord of the holding. A co-sharer landlord purchasing from the thicadar the holding of the occupancy raiyat purchased by the thicadar, cannot resist the claim of the other co-sharers

—S 23 A—Proviso—Scope and effect of—Trees on holding of tenant—Entry to latest record recording trees as in possession of landlord—Effect of—Right of landlords to produce of trees See 1939 Dig, Col 78  
 MAHOMED NAIM v LACHHU SAHU  
 AIR 1940 Pat 175

—(as amended in 1938), S 26 B Proviso—Scope and operation of—Non transferable holding—

—(as amended in 1907), S 26 B

—(as amended in 1938), S 48 A—Retrospective operation

S 43 A of the Bihar Tenancy Act as amended in retrospective and applies to all it shall be deemed to be still though a decree for ejectment has been taken before the new (*Kewland and Chatterji, JJ*)

AGIN SINGH v BHUDEO SINGH  
 580=12 RP 620=1940 PWN 272=  
 6 BR 496—AIR 1940 Pat 515  
 2 and 180—Relative scope—Right of to abatement See 1939 Dig, Col 79  
 NATH CHATTERJI v JUGAL PRASAD  
 185 IC 144=12 RP 306

Rent—Instalments—When due  
 Rent of rent is considered to fall due on day to day to  
 SINGH

1940 Pat 673

**BIHAR TENANCY ACT (1885), S. 60**

—S 60—Applicability—Conditions of. *See* 1939  
Dig, Col 79 RAMA PRASAD v. RAM RAN BIJAY  
PRASAD SINGH. 186 IC 269—6 BR 321—  
12 RP 466

RAMA PRASAD v. RAM RAN

186 IC 269—6

—Ss 60 and 72—Plea o

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REGISTRATION ACT, S 79

—S 60—Scope—Pla

Dig, Col. 80. RAMA PR

PRASAD SINGH

**BIHAR TENANCY ACT (1885), S. 116.**

BIHAR TENANCY ACT (AS AMENDED IN 1937), S. 67.  
6 BR 773—189 IC 269.  
—S 86—*Deed of surrender—Need for registra*  
*tion.*

surrender may, therefore,

of the surrender (*Agar*

JHA v. AJAB LAL

190 IC 756.

14 BR 1 400. of mortgagee in possession.

A mortgagee of a tenant who enters into possession

19 Pat 824—A I R 1940 Pat 673

—(as amended in 1937) S 67—Scope—

Retrospective—*Sust before amendment—Decree after—*

Procedure—Damages under old S. 68—Award of—

Legality.

The new section S 67 of the Bihar T

amended in 1937, is not retrospective

are taken against the mortgagee from the tenant as a  
result of default committed by the mortgagee in paying  
rent and then the mortgagee takes a new settlement  
from the landlord, the new tenancy will enure for the  
benefit of the mortgagor, who and his successors-in-

## BIHAR TENANCY ACT (1885), S 21

operation of Ss 20 and 21 of the Bihar Tenancy Act and under S 25 of that Act he cannot be ejected except on the conditions prescribed by that section (*James and Chatterji JJ*)  
 RAMASRAY PRASAD CHAUDHURY v RAMSURAT SINGH  
 6 BR 84=184 IC 838=12 RP 282=21 Pat LT 181= AIR 1940 Pat 131

—S 21—Cultivating lease—Lease to settled raiyat of kharbaur and khukashit land fixing annual jama payable to landlord—Tenant entitled to remain in possession and occupation till term of lease and to appropriate produce—Clause that tenant to have no right in land besides sitting wild khar—Effect of—If cultivating lease—Occupancy right—If accrues. See 1939 Dig, Col 77 W W M MURRAY (COURT OF WARDS) v SURESH KAI  
 186 IC 232=6 BR 313=12 RP 463

—(before amendment of 1907), S 22(2)—Co-owner purchasing occupancy right—Right to retain possession after allotment of land to other co-sharer by partition

There is nothing in Sub S (2) to suggest that a co-owner who purchases an occupancy right is entitled to retain possession after the land which he has purchased has been allotted to the party of any other co-sharer by partition (*Harries C J Agarwala and Manohar Lal JJ*) SUNDAR MALL LACHHMI TEWARI  
 19 Pat 893=189 IC 500=13 RP 113=6 BR 809=1940 PWN 596=21 PLT 667= AIR 1940 Pat 467 (FB)

—(before amendment of 1907), S 22(2)—Co-proprietor purchasing occupancy right—Status of—If tenant of other co-proprietors

A co-proprietor purchasing an occupancy right in land is not a tenant under the other co-proprietors of the land. Nor can he be viewed as occupying the status of a tenant under himself and his co-proprietors for that involves the purchaser being a tenant under himself and the other co-proprietors as landlords (*Harries C J, Agarwala and Manohar Lal JJ*) SUNDAR MALL LACHHMI TEWARI  
 19 Pat 893=189 IC 500=13 RP 113=6 BR 809=1940 PWN 596=21 PLT 667= AIR 1940 Pat 467 (FB)

—(before amendment of 1907), S 22(2)—Scope and effect of—Purchase by one co-owner of occupancy right—Only occupancy right ceases to exist and not all minority rights

The effect of the purchase by one of the co-owners of land of an occupancy right is not that the tenancy rights cease to exist altogether but only the occupancy right which is an incident of the holding (*Harries C J, Agarwala and Manohar Lal JJ*) SUNDAR MALL LACHHMI TEWARI  
 19 Pat 893=189 IC 500=13 RP 113=6 BR 809=1940 PWN 596=21 PLT 667= AIR 1940 Pat 467 (FB)

—(as amended in 1907), S 22(2)—Scope—Retrospective effect

The amendments made in S 22(2) by the Amending Act of 1907 do not apply to a purchase made before that date (*Harries C J, Agarwala and Manohar Lal JJ*) SUNDAR MALL LACHHMI TEWARI  
 19 Pat 893=189 IC 500=13 RP 113=6 BR 809=1940 PWN 596=21 PLT 667= AIR 1940 Pat 467 (FB)

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—S 22(3)—Construction—Occupancy holding—Purchase by thicadar—Effect—Thicadar selling right to co-sharer landlord—Rights and status of latter—If can resist claim of other co-sharers to share by partition

## BIHAR TENANCY ACT (1885), S 53

Where a thicadar purchases an occupancy holding during the period of his lease, he becomes a non-occupancy raiyat in respect of the holding so purchased, as it is well-settled that land held in non-occupancy right is not ordinarily transferable—a vendee from the thicadar purchaser cannot acquire either non-occupancy or occupancy rights in the lands though the vendee from the thicadar is a co-sharer landlord of the holding. A co-sharer landlord purchasing from the thicadar the holding of the occupancy raiyat purchased by the thicadar cannot resist the claim of the other co-sharers to a share in the lands in proportion to their interests in the village in question (*East Ali and Varma JJ*) HARISHPRASAD SINGH v HITLAL SINGH  
 21 Pat LT 320= AIR 1910 Pat 617

—S 23 A—Proviso—Scope and effect of—Trees on holding of tenant—Entry to latest record recording trees as in possession of landlord—Effect of—Right of landlords to produce of trees. See 1939 Dig, Col 78 MAHOMED NAIM v LACHHU SAHU  
 AIR 1940 Pat 175

—(as amended in 1938), S 26 B, Proviso—Scope and operation of—Non-transferable holding—Transfer in 1912—Transferee in possession continuously thereafter—Consent of landlord—Presumption—Sale of holding in execution of rent decree against original tenant alone in 1931—Suit for ejectment of transferee by purchaser in execution—Competency. See 1939 Dig, Col 78 CHANDRIKA PRASAD SINGH v RAM LAL SAHU  
 187 IC 629=6 BR 521=12 RP 623

—(as amended in 1934), S 26 O—Applicability and scope—Pending suit by landlord and pending suits by tenant—Distinction if any—Deposit pending appeal—Sufficiency

In applying S 26 O of the Bihar Tenancy Act as amended in 1934 to pending suits it is not possible or permissible to draw any distinction between cases in which the landlord is the plaintiff and cases in which the tenant is the plaintiff. The title of the transferee would not become extinct by the passing of a decree against him unless and until that decree becomes final as it might by the lapse of the period of limitation for an appeal and the omission to file an appeal against the decree. Deposit pending appeal is sufficient (*Agarwala and Rowland JJ*) JAGA SINGH v BASUDEO SINGH  
 6 BR 483=187 IC 518=12 RP 601= AIR 1940 Pat 581

—(as amended in 1938), S 48 A—Retrospective operation

S 48 A of the Bihar Tenancy Act as amended in 1938 is intended to be retrospective and applies to all pending actions. A suit shall be deemed to be still pending in appeal, although a decree for ejectment has already been passed by the Court below, and it has been duly executed and possession taken before the new S 48 A came into force (*Rowland and Chatterji JJ*) AGIN SINGH v BHUDEO SINGH  
 187 IC 580=12 RP 620=1940 PWN 572=6 BR 496= AIR 1940 Pat 515

—Ss 52 and 180—Relative scope—Night of tenure holders to abate rent. See 1939 Dig, Col 79 NRIPENDRA NATH CHATTERJI v JUGAL PRASAD MANDAL  
 185 IC 144=12 RP 306

—S 53—Rent—Installments—When due  
 Each instalment of rent is considered to fall due on the last date of the period in respect of which it is payable. Rent is not considered as accruing from day to day (*Agarwala and Rowland JJ*) CHHATAR SINGH v SYED SHAH QASIM GHANI  
 19 Pat 821= AIR 1940 Pat 673

**BIHAR TENANCY ACT (1885), S 60**  
—S 60—Applicability—Conditions of. See 1939  
Dig. Col 79 RAMA PRASAD v RAM RAN BIJAY  
PRASAD SINGH 186 IC 269=6 B.R. 321=  
12 R.P. 466  
—S 60—Construction—Registered proprietor  
—Ss 60 and 72—Plea of payment of rent to pro-  
prietor after expiry of *tuca*—Onus See BENGAL LAND  
REGISTRATION ACT, S 79 21 Pat L.T. 336  
—S 60—Scope—Plea barred under See 1939  
Dig. Col 80 RAMA PRASAD v RAM RAN BIJAY  
PRASAD SINGH 186 IC 269=6 B.R. 321=  
12 R.P. 466

**BIHAR TENANCY ACT (1885), S 116**  
BIHAR TENANCY ACT (AS AMENDED IN 1937), S 67.  
6 B.R. 773=189 IC 269  
—S 86—Deed of surrender—Need for registra-  
tion  
A deed of surrender of an occupancy holding need not  
be drawn apart from an unregis-  
tered (Agarwala, J) SINGHESHWAR JHA v. AJAB LAL  
MANDAR. 190 IC 756.  
—S 87—Scope—Mortgagee in possession—Pro-  
ceedings under section for default in payment of rent—  
Subsequent settlement of land on mortgagee—Effect—  
Right of original tenant to redeem mortgagee—Duty  
of mortgagee in possession.

19 Pat. 824=A.I.R. 1937  
—(as amended in 1937) S  
Retrospective—Suit before amendment—De-  
Procedure—Damages under old S. 68—  
Legality  
The new section S 67 of the Bihar  
amended in 1937, is not retrospective  
of rent of 1934-35.

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paying  
lement  
or the  
ment of the mortgagor, who and his successors in-

of the judgment when that section was no longer in  
force.

—S 116—Applicability—Conditions.  
In order to bar the acquisition of occupancy or of the  
of a non-occupancy riyat in respect of proprietor's  
or *ziri* lands, it is necessary that such lands  
be held under a lease for a term of years or  
under a lease from year to year The proprietor is

## BIHAR TENANCY ACT (1885), S 21

operation of Ss 20 and 21 of the Bihar Tenancy Act and under S 25 of that Act, he cannot be ejected except on the conditions prescribed by that section. (*James and Chatterji, JJ*)  
 RAMASRAY PRASAD CHAUDHURY & RAMSURAT SINGH  
 6 BR 84=184 IC 838=  
 12 RP 282=21 Pat LT 181=  
 AIR 1940 Pat 131

—S 21—Cultivating lease—Lease to settled raiyat of kharbaur and khudkasht land fixing annual jama payable to landlord—Tenant entitled to possession and occupation till term appropriate produce—Clause that right in land besides cutting wild k

cultivating lease—Occupancy right—Dig, Col 77 W W M MURRAY (COURT OF WARDS) v SUMRIT RAI  
 186 IC 232=  
 6 BR 313=12 RP 463

—(before amendment of 1907) S 22(2)—Co-owner purchasing occupancy right—Right to retain possession after allotment of land to other co sharer by partition

There is nothing in Sub S (2) to suggest that a co-owner who purcha es an occupancy right is entitled to retain possession after the land which he has purchased

—(before amendment of 1907), S 22 (2)—Co-proprietor purchasing occupancy right—Status of—If tenant of other co-proprietors

A co-proprietor purchasing an occupancy right in land is not a tenant under the other co p land Nor can he be viewed as occupier tenant under himself and his co prop involves the purchaser being a tenant

—(before amendment of )  
 Scope and effect of—Purchase occupancy right—Only occupancy right is created in land and not all tenancy rights

The effect of the purchase by one of the co owners of land of an occupancy right is not that the tenancy rights cease to exist altogether but only the occupancy

—(as amended in 1907) S 22 (2)—Scope—Retrospective effect

The amendments made in S 22 (2) by the Amending Act of 1907 do not apply to a purchase made before that date (*Harries C J, Agarwala and Manohar Lall, JJ*)

—S 22(S)—Construction—Occupancy Purchase by thicadar—Effect—Thicadar to co sharer landlord—Rights and status can vest claim of other co sharers to s tion

## BIHAR TENANCY ACT (1885), S 53

Where a thicadar purchases an occupancy holding during the period of his lease, he becomes a non occupancy raiyat in respect of the holding so purchased, as it is well settled that land held in non occupancy right is not ordinarily transferable—A vendee from the thicadar purchaser cannot acquire either non-occupancy or occupancy rights in the lands though the vendee from the thicadar is a co-sharer landlord of the holding—A co-sharer landlord purchasing from the thicadar the holding of the occupancy raiyat purchased by the

—S 23 A—Proviso—Scope and effect of—Trees on holding of tenant—Entry to latest record recording trees as in possession of landlord—Effect of—Right of landlords to produce of trees See 1939 Dig, Col 78 MAHOMED NAIM v LACHHU SAHU  
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—(as amended in 1938), S 26 B Proviso—Scope and operation of—Non-transferable holding—Transfer in 1912—Transferee in possession continuously thereafter—Consent of landlord—Presumption—Sale of holding in execution of rent decree against original tenant alone in 1931—Suit for ejectment of transferee by purchaser in execution—Competency See 1939 Dig Col 78 CHANDRIKA PRASAD SINGH v RAM LAL SAHU 187 IC 629=6 BR 521=12 RP 623

—(as amended in 1934) S 26 O—Applicability and scope—Pending suit by landlord and pending suits by tenant—Distinction if any—Deposit pending appeal—Sufficiency

In applying S 26 O of the Bihar Tenancy Act as

it become extinct by the passing of a decree against him unless and until that decree becomes final as it is by the lapse of the period of limitation for an appeal and the omission to file an appeal against the decree Deposit pending appeal is sufficient (*Agarwala*)

—(as amended in 1938), S 48 A—Retrospective operation

S 48 A of the Bihar Tenancy Act as amended in 1938 is intended to be retrospective and applies to all pending actions A suit shall be deemed to be still pending in appeal although a decree for ejectment has already been passed by the Court below, and it has been fully executed and possession taken before the new 48 A came into force (*Rewland and Chatterji JJ*)  
 AGIN SINGH v BHUDEO SINGH  
 187 IC 580=12 RP 620=1940 PWN 272=  
 6 BR 496=AIR 1940 Pat 515

—Ss 52 and 180—Relative scope—Right of tenure holders to abatement See 1939 Dig, Col 79 NRIPENDRA NATH CHATTERJI v JUGAL PRASAD MANDAL  
 185 IC 144=12 RP 306

—S 53—Rent—Installments—When due

**BIHAR TENANCY ACT (1885) S 60**

—S 60—Applicability—Conditions  
 Dig, Col 79 RAMA PRASAD v RAM  
 PRASAD SINGH 186 IC 269—

—S 60—Construction—Registered proprietor  
 really entitled to less interest t  
 rest—Right to obtain full dec  
 extent of interest recorded  
 RAMA PRASAD v RAM RAN  
 186 IC 269—6

—Ss 60 and 72—Plea o  
 prietor after expiry of *inca*—  
 REGISTRATION ACT, S 79

—S 60—Scope—Plea  
 Dig, Col 80 RAMA PRASAD v RAM RAN BIJAY  
 PRASAD SINGH 186 IC 269—6 B.R. 321—  
 12 RP 466

**BIHAR TENANCY ACT (1885), S 116**

v 1937) S 67  
 189 IC 269  
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 190 IC 756  
 mission—Pro  
 vent of rent—

Subsequent settlement of land on mortgage—Effect—  
 Right of original tenant to redeem mortgage—Duty  
 of mortgagee in possession

**Legality**

The new section S 67 of the Bihar Tenancy Act as  
 amended in 1937 is not retrospective. A suit for

title would be entitled to redeem the mortgage, not  
 withstanding the dispossession and new settlement  
 (Harris C J and Fazl Ali J) CHANDI MANDER v.

Held the decree which was passed after the new Act  
 came into force was not correct, because S 68 of the  
 old Act having been repealed could not be availed of as  
 no litigant had any vested right in the provisions of  
 the old S 68. The discretion given to the Court by  
 that section having been taken away by the repeal of  
 that section the Court could not resort to it on the date  
 of the judgment when that section was no longer in

MAHTO

20 P.L.T. 929—6 B.R. 147—  
 185 IC 254—12 RP 330

**—S 116—Applicability—Conditions**

In order to bar the acquisition of occupancy or of the  
 right of a non-occupancy raiyat in respect of proprietor's  
 private or *Zirats* lands it is necessary that such lands  
 should be held under a lease for a term of years or  
 under a lease from year to year. The proprietor is

## BIHAR TENANCY ACT (1885), S 116

—S. 116—Construction—"Lease for term of years"—Meaning of

Quaere:—Whether the words "lease for a term of years", include a lease for one year or for a fraction of a

## BIHAR TENANCY ACT (1885), S 158 B

Act, all parties interested in the tenure or holding must be joined as debtors in the certificate proceedings or be sufficiently represented by the parties joined as such, unless this is done, the purchaser at the certificate sale her the shares of other parties nor the encumbrances, but only the right, title certificate debtors themselves. The are, being a summary mode for the, makes it all the more necessary for

notice defective

A notice under S 155 of the Bihar Tenancy Act is not defective because at the time it was issued the misuse may have been incomplete whereas at the time

(as amended in 1938), Ss 158 B (2), 163 (5) and 163 A—Construction and scope—Pending application for execution—If governed by—Intention of Legislature

duty.

S. 158-B (2) is only one of a group of sections by which evil and must be lions in the group ssly prohibits the n that specified in just be read with next and which

representation—Applicability.

directed the issue of a writ of attachment and a 1938 as the date of sale. Act meanwhile came e writ and proclamation issued actually until d for sale the judgment- held on the ground that

**BIHAR TENANCY ACT (1885) S. 163**

the Court had not valued the property to be sold as

sale proclamation had not been issued when the amending Act came into force there was no question of giving retrospective effect to the sections in question. The law had been amended before the proclamation was issued and the Court was required to hear the parties as to the

—(as amended in 1938) S. 163 (6)—Scope—Retrospective operation—Pending proceedings—If affected—If to be read with S. 158-B (2) and 163 A. See **BIHAR TENANCY ACT (AS AMENDED IN 1938)** SS 158 B (2) 163 (5) AND 163 A. 19 Pat 289

—(as amended in 1938) S. 163 A—Scope—Retrospective operation—If to be read with S. 158 B (2) and 163 (5). See **BIHAR TENANCY ACT (AS AMENDED IN 1938)** SS 158 B (2) 163 (5) AND 163 A. 19 Pat 289

—S. 169 (1) (c)—Auction purchaser—Liability of for rent between date of sale and its confirmation

According to S. 169 (1) (c) the decree holder is entitled to receive from the surplus sale proceeds any rent which may have fallen due in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale and no longer. It is quite clear then that from the date of the confirmation of the sale the only person to whom the landlord can look for his rent is the auction purchaser. He is not liable to pay rent from the date of sale up to its confirmation as the Bihar Tenancy Act must be held to prevail and the more general enactment that is to say S. 65 C P Code will to that extent not be applicable (*Agarwala and Rowland JJ*). **CHHATAR SINGH v SYED SHAH QASIM GHANI** 19 Pat 824—A.I.R. 1940 Pat 673

—S. 169 (1) (c)—Sale—Effect of on charge for rent—Extent to which it is extinguished

The ordinary rule as to the consequences of a suit to enforce a charge or a mortgage is that on sale of the

of the sale and if that is the extent of the charge that he is enforcing that will also be the extent of the charge which is extinguished. After sale of the property sold in execution of a rent decree the possession of the tenant, it is the execution of any other decree tenant (*Agarwala and Rowland JJ*). **SINGH v SYED SHAH QASIM GHANI** 19 Pat 824—A.I.R. 1940 Pat 673

—(as amended in 1937) S. 177 A (5)—Occupied by him—Meaning of

The words "occupied by him" in S. 177 A (5) of the Bihar Tenancy Act as amended in 1937, mean occupied by the raiyat or under raiyat as such raiyat or under raiyat and do not exempt from attachment houses or

**BIHAR TENANCY ACT (1885), Sch. III Art. 3.**

**KUMAR SINHA** 19 Pat 410—1910 P.W.N. 502—A.I.R. 1940 Pat 611

179—Lease falling under—Clause for rent on non payment of rent—Validity. See 1939 n 81. **MAHOMED HASSAN v BALDYANATH** 21 Pat.L.T. 117—A.I.R. 1940 Pat 140

—S. 179—Mukarari lease—Landlord's right to contract out of S. 155—Lessee's right to equitable relief—T.P. Act, S. 114

There is nothing in S. 179 of the Bihar Tenancy Act to prevent the landlord from entering into a contract with the lessee to the effect that the right of ejectment shall have under the agreement shall not be to any such qualifications as are imposed by the T.P. Act, S. 114

The lessee cannot claim any relief under S. 114 of the Transfer of Property Act. That section is not applicable as the case is not governed by the Transfer of Property Act but by the Bihar Tenancy Act. Further the principle underlying that section is also embodied in S. 155 of the Bihar Tenancy Act and if that Act itself which contains this provision enables the tenant to contract himself out of the concession available to him under it, there can be no further room for the application of any equitable principle (*Harries, C.J. and Fazl Ali, J.*) **SINGH**

—S. 188—Scope—Notice under S. 155—Suit by some of the co-sharer landlords for ejectment after expiry of notice—Maintainability

A suit to eject a trespasser can be maintained by a co-sharer but in order to have a cause of action for a suit to eject a tenant as a trespasser, the tenancy must first have been determined and the tenancy must be determined by the whole body of landlords. There must be an expression in the notice on behalf of the sixteen annas landlord of an intention to terminate the tenancy. The service of a notice under S. 155 of the Bihar Tenancy Act has not the effect of a notice under S. 49. But a suit for ejectment under S. 188 by some co-sharers only after the expiry of notice under S. 155 ought not to be dismissed entirely. A suit of this nature is not one in which the whole body of landlords are required or authorised to bring. S. 188 cannot be a bar to the maintainability of a suit for compelling the

Sch. III, Art. 3—Applicability—Dispossession—If must be by landlord as such

does not must be the tenant right, title be special law of Limitation under Art. 3, Sch. III of the Bihar Tenancy Act. In a case where the decree obtained by the landlord against the original tenant, is only a money decree and the landlord purchases only the right, title and interest of the original tenant (whatever that may be) and not the holding or the tenancy right of the tenant the dispossession of the tenant by the landlord purchaser effected long after the sale and out of Court but merely upon the special limit Bengal Tenancy Act 1921 *Ali and Mird*





## BIHAR TENANCY ACT (1885) S. 163

the Court had not valued the property to be sold as

ing Act came into force there was no question of giving retrospective effect to the sections in question. The law had been amended before the proclamation was issued and the Court was required to hear the parties as to the value of the holding sought to be sold (*Agarwala and Meredith, JJ*) **BIGAN SINGH v SYED SHAH ZAFFAR HUSSAIN** 19 Pat 289—1910 P W N 412—A I R 1940 Pat 567

—(as amended in 1938) S 163 (5)—Scope—Retrospective operation—Pending affected—If to be read with S 12 See BIHAR TENANCY ACT (AS AMENDED IN 1938) SS 158 B (2) 163 (5) AND 163 A

—(as amended in 1938) S 163 A—Scope—Retrospective operation—If to be read with S 158 B (2) and 163 (5) See BIHAR TENANCY ACT (AS AMENDED IN 1938) SS 158 B (2) 163 (5) AND 163 A 19 Pat 289

—S 169 (1) (c)—Auction purchaser—Liability of for rent between date of sale and its confirmation

According to S 169 (1) (c) the decree holder is entitled to receive from the surplus sale proceeds any rent which may have fallen due in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale and no longer. It is quite clear then that from the date of the confirmation of the sale the only person to whom the landlord can look for his rent is the auction purchaser. He is not liable to pay

—S 169 (1) (c)—Sale—Effect of on charge for rent—Extent to which it is extinguished

The ordinary rule as to the consequences of a suit to enforce a charge or a mortgage is that on sale of the

that should accrue due up to the date of the confirmation of the sale and if that is the extent of the charge that he is enforcing that will also be the extent of the charge which is extinguished. After a holding has been once sold in execution of a rent decree and the possession of the tenant it cannot be in execution of any other decree for rent (tenant (*Agarwala and Roseland, JJ*) **SINGH v SYED SHAH QASIM GHANI** 19 Pat 821—A I R 1940 Pat 673

—(as amended in 1937) S 177 A (b)—Occupied by him—Meaning of

The words "occupied by him" in S 177 A (b) of the Bihar Tenancy Act, as amended in 1937, mean occupied by the raiyat or raiyat and do not buildings not occupied dwelling house or vocation as a raiyat (*Prasad, JJ*)

Y. D. 1940—8

## BIHAR TENANCY ACT (1885), Sch III Art 3

**KUMAR SINHA** 19 Pat 410—1940 P W N 502—A I R 1940 Pat 614

179—Lease falling under—Clause for re non payment of rent—Validity See 1939

181 **MAHOMED HASSAN v BAIDYANATH** 21 Pat L T 117—A I R 1940 Pat 140

179—Mukarari lease—Landlord's right to contract out of S 155—Lessee's right to equitable relief—T P Act, S 114

There is nothing in S 179 of the Bihar Tenancy Act to prevent the landlord from entering into a contract with the lessee to the effect that the right of ejectment which he shall have under the agreement shall not be subject to any such qualifications as are imposed by S 155. The lessee cannot claim any relief under S 114 of the Transfer of Property Act. That section is not

tract himself out of the concession available to him under it, there can be no further room for the application of any equitable principle (*Harriet, C J and Fazl Ali, JJ*) **MUKHAN SINGH v CHANDRIKHA PRASAD SINGH** 19 Pat 269—12 R P 333—185 I C 278—6 B E 145—1940 P W N 484—A I R 1940 Pat 371

—S 188—Scope—Notice under S 155—Suit by some of the co sharer landlords for ejectment after expiry of notice—Maintainability

A suit to eject a trespasser can be maintained by a co sharer but in order to have a cause of action for a suit to eject a tenant as a trespasser, the tenancy must first have been determined and the tenancy must be determined by the whole body of landlords. There be an expression in the notice on behalf of the rannas landlord of an intention to terminate the y. The service of a notice under S 155 of the Tenancy Act has not the effect of a notice under

But a suit for ejectment under S 188 by some co sharers only after the expiry of notice under S 155 ought not to be dismissed entirely. A suit of this nature is not one which the whole body of landlords are required or authorised to bring. S 188 cannot be a bar to the maintainability of a suit for compelling the

**SAD SAHI** 21 Pat L T 622—A I R 1940 Pat 703

—Sch III, Art 3—Applicability—Dispossession—If must be by landlord or such

Tenancy Act. In a case where the decree obtained by the landlord against the original tenant, is only a money decree and the landlord purchases only the right title and interest of the original tenant (whatever that may be) and not the holding or the tenancy right of the landlord Court upon the

## BIHAR TENANCY ACT (1885), S 116

—S 116—Construction—"Lease for term of years"—Meaning of

Quære—Whether the words "lease for a term of years", include a lease for one year or for a fraction of a

plementary to the other and as a consolidated decree for able to the different co share portion to their shares. If the first is a rent decree and has the effect of only a money and Chatterji, JJ) SURYA

TASIRAN NISAN

13 R.P. 80=6 B.R. 798=A.I.R. 1940 Pat.

—S 155—Mukarati lease—Landlord's right contract out of section See BIHAR TENANCY S 179

—S. 155—Notice—Validity—Misuse compl of incomplete at time of issue of notice—If re notice defective

A notice under S. 155 of the Bihar Tenancy Act is not defective because at the time it was issued the

## BIHAR TENANCY ACT (1885), S 158 B

Act, all parties interested in the tenure or holding must be joined as debtors in the certificate proceedings or be sufficiently represented by the parties joined as such, unless this is done, the purchaser at the certificate sale

whole body of tenants had held on one of them as their

(as amended in 1938), Ss 158 B (2), 163 (5) and 163 A—Construction and scope—Pending application for execution—If governed by—Intention of Legis

**BIHAR TENANCY ACT (1885). S. 163.**

the Court had not valued the property to be sold as

sale proclamation had not been issued when the amending Act came into force, there was no question of giving retrospective effect to the sections in question. The law

—(as amended in 1938) S 163 (5)—Scope—Retrospective operation—Pending proceedings.—If affected—If to be read with S 158-B (2) and 163 A See BIHAR TENANCY ACT (AS AMENDED IN 1938), SS 158-B (2), 163 (5) AND 163 A 19 Pat 289

—(as amended in 1938), S 163 A—Scope—Retrospective operation—If to be read with S 158 B (2) and 163 (5) See BIHAR TENANCY ACT (AS AMENDED IN 1938), SS 158-B (2), 163 (5) AND 163 A 19 Pat 289

—S 163 (1) (c)—Auction purchaser—Liability of for rent between date of sale and its confirmation

According to S 169 (1) (c) the decree holder is entitled to receive from the surplus sale proceeds any rent which may have fallen due in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale and no longer. It is quite clear then that from the date of the confirmation of the sale the only person to whom the landlord can look for his rent is the auction purchaser. He is not liable to pay rent from the date of sale up to its confirmation as the Bihar Tenancy Act must be held to prevail and the more general enactment that is to say S 65, C P Code, will to that extent not be applicable. (*Agarwal and Rowland JJ*) CHHATAR SINGH v SYED SHAH QASIM GHANI, 19 Pat 824—A I R 1940 Pat 673

—S. 169 (1) (c)—Sale—Effect of on charge for rent—Extent to which it is extinguished.

The ordinary rule as to the consequences of a suit to enforce a charge or a mortgage is that on sale of the

SINGH : SYED SHAH QASIM GHANI

19 Pat 824—A I R 1940 Pat 673

—(as amended in 1937), S 177-A (b)—“Occupied by him”—Meaning of.

The words “occupied by him” in S 177 A (b) of the Bihar Tenancy Act, as amended in 1937, mean occupied by the raiyat or under raiyat as such raiyat or under raiyat and do not buildings not occupied dwelling house or vocation as a raiyat (*Pandit, J.J.*)

Y. D. 1940—8

**BIHAR TENANCY ACT (1885), Sch. III Art. 3.**

KUMAR SINHA, 19 Pat 410—1940 P.W.N. 502—A I R, 1940 Pat. 614

“179—Lease falling under—Clause for re non payment of rent—Validity See 1939 of 81. MAHOMED HASSAN v. BAIDYANATH 21 Pat.L.T. 117—A I R 1940 Pat 140

—S. 179—Mukarari lease—Landlord's right to contract out of S. 155—Lessee's right to equitable relief—T P Act, S 114.

—S. 179—Mukarari lease—Landlord's right to contract out of S. 155—Lessee's right to equitable relief—T P Act, S 114.

—S. 179—Mukarari lease—Landlord's right to contract out of S. 155—Lessee's right to equitable relief—T P Act, S 114.

to any such qualifications as are imposed by

The lessee cannot claim any relief under S. 114 of the Transfer of Property Act. That section is not applicable as the case is not governed by the Transfer of Property Act but by the Bihar Tenancy Act. Further the principle underlying that section is also embodied in S. 155 of the Bihar Tenancy Act and if that Act itself which contains this provision enables the tenant to contract himself out of the concession available to him under it, there can be no further room for the application of any equitable principle (*Harris, C.J and Fazl Ali, J.*) MUK SINGH 19

—S. 179—Mukarari lease—Landlord's right to contract out of S. 155—Lessee's right to equitable relief—T P Act, S 114.

—S. 179—Mukarari lease—Landlord's right to contract out of S. 155—Lessee's right to equitable relief—T P Act, S 114.

—S 188—Scope—Notice under S. 155—Suit by some of the co sharer landlords for ejectment after expiry of notice—Unmaintainability

A suit to eject a trespasser can be maintained by a co-sharer, but in order to have a cause of action for a suit to eject a tenant as a trespasser, the tenancy must first have been determined and the tenancy must be determined by the whole body of landlords. There must be an expression in the notice on behalf of the sixteen annas landlord of an intention to terminate the tenancy. The service of a notice under S 155 of the Bihar Tenancy Act has not the effect of a notice under S. 49. But a suit for ejectment under S. 188 by some co sharers only after the expiry of notice under S 155, ought not to be dismissed entirely. A suit of this nature is not one which the whole body of landlords are required or authorised to bring. S 188 cannot be a bar to the maintainability of a suit for compelling the

1940 Pat 703.

—Disposition—

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law of Limitation under Art 3, Sch. III of the Bihar Tenancy Act. In a case where the decree obtained by the landlord against the original tenant, is only a money decree, and the landlord purchases only the right, title and interest of the original tenant (whatever that may be) and not the holding or the tenancy right of the tenant, the dispossession of the tenant by the landlord Court,

—Disposition—

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**BIHAR TENANCY ACT (1885), Sch III Art 5**

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Where a landlord in execution of his decree for sale and of possession to dispossess within the 12, so as to Revolut

12 R.P. 6:—  
Sch III, Art  
cut by same proprietor of  
tenures held by different  
decrees for amounts less  
respective tenants—Limitation—  
decree applicable—Rent decree or money decr

The plaintiff who was the sole proprietor of an estate instituted a suit claiming the full of two tenures for 4 years one tenure recorded in one khewat and the other tenure in another khewat. The tenants interested in the khewat were not identical with the tenants interested in the other, i.e., each khewat was held by a different set of tenants separate from the other. The plaintiff got a decree for Rs 20/-

an amount less than Rs 500 as a rent decree under the Bihar Tenancy Act, and of either of them was governed by Sch III of the Bihar Tenancy Act.

Held, further, that the fact the suit was a single suit for rent of more than one tenure did not make it a suit in which only a money decree could be passed, so as to exclude the provisions of Art 6 of Sch. III of the Act. (Rou JANKI RAI v RAM RAN BIJAYA PRASAD)

187 IC 49=12 RP 560=20 Pat L

6 BR 416=AIR 1940 Rat 145

**BOILERS ACT (V OF 1923) S**

Meaning of definition. See 1939 Dig C

v A S AGARWAL

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**BOMBAY ACTS Etc**

Abkari Act (V of 1878)

Borstal Schools Act (XVIII of 1907)

**BOMBAY ABKARI ACT (1878), S 7**

Jurisdiction of Jagirdars' Regulation (XI of 1830)

Khoti Settlement Act (I of 1880)

Land Revenue Code (V of 1879)

Land Revenue Rules.

Markets and Fairs Act (IV of 1882)

Municipal Boroughs Act (XVIII of 1925)

Native Share and Stock Brokers Association Rules

**BOA**

object of—introduction of total prohibition of intoxicants—If contemplated

the Bombay Abkari Act was though some of the sections of the Legislature intended also to trade in drink and drugs which might arise from such

The Court leans strongly against a construction which because it manifestly is not an act legal at the time by some new enactment, the Government of Bombay issued a notification under the Bombay Abkari Act 1878, S 14 B (d), prohibiting the possession of

issued under the said Act of the Abkari Act) before the commencement

On the same day but after the said decision of the High Court the Governor of Bombay being the then legislative authority in Bombay,

**BOMBAY ABKARI ACT (1878), S 14-B**

passed Bombay Act VI of 1940 amending the Bombay Abkari Act of 1878 By S. 6 of the Amending Act, the proviso to sub Sec (1) of S 14 B, was deleted, and sub Sec. (2) of S. 14 B was also amended in such a way as to remove in the case of notifications issued under the

which the said preamble and the said Court was enacted, (2) that even if S 7 did apply to the Notification in question, it had not the effect of reviving that Notification, (3) that an order of the Court was valid although the reasons upon which it was based were not stated.

In construing S 14 B of the Bombay Abkari Act (Beaumont, C J., Wadia, Macchi and Sen, JJ) **EMPEROR v. CHINNUBHA**

**I.L.R. (1940) Bom 587=190 IC 170=**

**41 Cr.L.J. 831=42 Bom**

**A.I.R. 1940 Bom. 273 (F.B.)**

Prohibition Act is clearly a part of sub S (1), and there

designated by name or description or a class of persons

**BOM CO-OP. SOCIETIES ACT (1925), S 70**

**I.L.R. (1940) Kar 83=185 IC 268=**

**12 B.S. 161=41 Cr.L.J. 143**

—S 6—Reference under Court—

—Maintain

**v. ABDUL**

—Ss 28(k) and 32—Scope—If mandatory. See 1939 Dig. Col. 87. **SHANKERLAL v. MUNICIPAL COMMISSIONER OF BOMBAY**

**186 IC 203=12 B.B. 301**

—S 33—Scope—Remedy under—If and day

—Administration suit—

—Art fees at sum below

First Class Subordinate

Court—Appeal—If lies

Court—Sind Courts Act,

48 **KALAWANTIBAI v.**

**I.L.R. (1910) Kar 1=**

**185 IC 244=12 B.B. 151.**

**BOMBAY CO-OP. SOCIETIES ACT**

y society of property

y letter for injunction

**BOMBAY CO-OPERATIVE**

**189 IC 880=**

**A.I.R. 1940 Sind 143**

and 59—Award—Executability by Civil

made under the Act which have become final

and are to be questioned by Courts under S 57

and are under S. 59 executable by Civil Court in the

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**BIHAR TENANCY ACT (1885), Sch III Art 3**

J/) **DEORATI KUER v. DASARATH DUBEY**  
 187 I.C. 539=12 R.P. 612=21 Pat L.T. 374=  
 6 B.R. 495=1940 P.W.N. 358=  
 A.I.R. 1940 Pat 476

Sch. III, Art. 3—*Applicability—Sale of holding for arrears of rent—Purchase by landlord and delivery of possession—If 'dispossession of tenant by landlord.'*

Where a landlord in execution of his decree for arrears of rent puts up his tenant's holding for sale and, having purchased it himself obtains delivery of possession as auction purchaser, that does not amount to dispossession of the tenant by the landlord within the meaning of Art 3 of Sch III of the B.T. Act, so as to make that article applicable (*Agarwala and Rosolant*)  
 J/) **JAGA SINGH v. BASDEO SINGH**  
 6 B.R. 483=187 I.C. 518=  
 12 R.P. 601=A.I.R. 1940 Pat 582

Sch. III, Art. 6—*Applicable*  
*suit by same proprietor for rent of*  
*tenures held by different tenants—7*  
*decrees for amounts less than Rs*  
*respective tenants—Execution—Limitation—Article applicable—Rent decree or money decree*

The plaintiff who was the sole proprietor of an estate instituted a suit claiming the full of two tenures for 4 years, one tenure recorded in one khewat and the other tenure in another khewat. The tenants interested in khewat were not identical with the tenants rested in the other, i.e., each khewat was held by a different set of tenants separate from the other. The plaintiff got a decree for Rs. 2044 6

and in the respect of each khewat and that each of these decrees was made in the same suit.

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**BOMBAY ACTS, Etc**  
**Abkari Act (V of 1878)**

41 Cr L.J. 26

**BOMBAY ABKARI ACT (1878), S. 7**

Jurisdiction of Jagirdars' Regulation (XIII of 1830).

Khoti Settlement Act (I of 1880)

Land Revenue Code (V of 1879).

Land Revenue Rules

Markets and Fairs Act (IV of 1882)

Municipal Boroughs Act (XVIII of 1925)

Native Share and Stock Brokers Association Rules

Prevention of Adulteration Act (VI of 1925)

Prevention of Gambling Act (IV of 1887)

Revenue Jurisdiction Act (X of 1876)

Tolls on Roads and Bridges Act (III of 1875).

**BOMBAY ABKARI ACT (V OF 1878)—Scope and object of—Introduction of total prohibition of intoxicants—If contemplated**

The primary object of the Bombay Abkari Act was to prevent the sale of intoxicants

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suggest that the Legislature contemplated the introduction of total prohibition of intoxicants as a measure of social reform, and it is obvious that such introduction

(as amended by Act VI of 1940), S. 7—

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enactment Notification of 17th July, 1937, the only notifications falling within the section were notifications effective at the date of the passing of the Amending Act and the section was not intended to affect the construction of notifications already rescinded still less of a notification which had been declared invalid and therefore had never had any effect and was a mere nullity.

**BOMBAY ABKARI ACT (1878), S 14-B**

passed Bombay Act VI of 1940, amending the Bombay Abkari Act of 1878 By S. 6 of the Amending Act, the proviso to sub Sec (1) of S 14 B, was deleted, and sub Sec (2) of S. 14 B was also amended in such a way

of the Act should have effect from the date on which the said preamble and the said provisions were enacted, (2) that even if S 7 did apply to the Notification in question, it had not the effect of reviving that Notification, (3) that an order of the Court was valid although the reasons upon which

**BOMBAY CO-OP SOCIETIES ACT (1925), S 70**

I.L.R. (1940) Kar. 83=185 I.C. 268=

12 R.S. 161=41 Cr.L.J. 143.

—S 6—Reference under—Conditions precedent to—Maintainability. See 1939 Dig., Col. 86 EMPEROR

183=

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1888),

re of—

communities—Legality—Right of voter to impeach

186 I.C. 203=12 R.B. 301.

—Ss 28(k) and 32—Scope—If mandatory See 1939 Dig., Col. 87 SHANKERLAL v. MUNICIPAL COMMISSIONER OF BOMBAY 186 I.C. 203=12 R.B. 301.

—S 33—Scope—Remedy under—If excludes application under S 45, Specific Relief Act, before

14 R.B. 266.

—S 26—Appeal—Forum—Administration suit—Subject-matter valued for court fees at sum below 5 000—Plaint returned by First Class Subordinate Judge for presentation to proper Court—Appeal—If lies to District Court or to High Court—Sind Courts Act, S 8. See 1939 Dig., Col. 88 KALAWANTIBAI v. UDHAVDAS GIRDHARIDAS I.L.R. (1940) Kar. 1=

185 I.C. 244=12 R.B. 154.

A.I.R. 1940 Sind 143.

and 59—Award—Executability by Civil

made under the Act which have become final

to be questioned by Courts under S 57

under S. 59 executable by Civil Court in the

—Ss 70 and 51—Sale by society of property mortgaged by member—Suit by latter for injunction against sale—Notice, if necessary—Suit, if barred

A suit by a member of a Co-operative Society for an injunction to restrain the society from selling the pro-

ment prohibiting any person within specified area from possessing any intoxicant—Legality—If ultra vires

The proviso to sub S (1) of S 14 B of the Bombay Prohibition Act is clearly a part of sub S (1), and there is no doubt that it is competent to Gove sub S. (2) of the section to prohibit the any person or class of persons of foreign l as they can prohibit the possession of cr But this power to prohibit the possession or class of persons either throughout the whole Presi

Call. 14/11/1940, C.J. 17/11/1940, Madras, 11/11/1940 and Sen. JJ) EMPEROR v. CHINNUBHAI

I.L.R. (1940) Bom 587=190 I.C. 170=13 R.B. 99=

41 Cr.L.J. 831=42 Bom L.R. 669=

A.I.R. 1940 Bom 273 (F.B.)



## BOMBAY DISTRICT LOCAL BOARDS ACT (1923) S 42

loans to its members is the business of the society and the act which the society is alleged to be about to do is an act "touching the business of the society." It is, therefore essential that the plaintiff before filing his suit should give the society the notice specified in S 70 of the Act. Further the dispute is one between a member and the society and under the terms of S 54 of the Act it should be referred to the Registrar for decision by himself or his nominee (*Lobo J*) **FAKIR MAHOMED v MERCANTILE CO-OPERATIVE BANK, LTD KARACHI** 189 IC 880 =

13 RS 49 = A I R 1940 Sind 143

## BOMBAY DISTRICT LOCAL BOARDS ACT (VI OF 1923) S 42—Applicability—Suit by Local Board

suretyship executed in favour of a District Local Board by a person standing surety for a contractor for a lease of fisheries under the Local Board is an agreement between the Local Board and the surety and must comply with the provisions of S 42 (2) otherwise no suit could be brought upon it (*Davis J C and Weston J*) **BRUMBHO METHARAM v DISTRICT LOCAL BOARD HYDERABAD**

I L R (1940) Kar 347 = A I R 1940 Sind 199

—S 42 (2)—Scope—Executed and executory contracts—Destruction—Omission to comply with requirements—Effect—English common law rule—Exceptions—Application of

Under the Common law of England a contract with a

tracts in the case of a contractor which does not comply with S District Local Boards Act the provisions of that section is

## BOMBAY DISTRICT POLICE ACT (1890) S 36

contained in a statute or rule made under the statute, which may fairly be regarded as forming one of the conditions of service and affecting the tenure of office of the employee concerned. If the plaintiff fails to establish that there has been any breach of any provision in the statute or rules, that is fatal to his claim (*Broomfield and Dittus JJ*) **GOKAK MUNICIPALITY v RAJARAM SHRIDHAR** 42 Bom LR 886 =

A I R 1940 Bom 386

—S 48—Construction—Bye-laws—Essentials—Necessity for resolution of Municipality after sanction of Commissioner

Bye laws may be made by a District Municipality under S 48 of the Bombay District Municipal Act with the

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makes material alterations in the draft the Municipality must follow the provisions of S 48 (2) and invite criticism on the altered by law. Where the Commissioner makes alterations in some of the draft bye laws but leaves others untouched it is not enough for the Municipality to invite criticism upon the bye laws altered by the Commissioner without doing anything further. The Municipality has to adopt them as altered by a resolution. The fact that some of the draft bye laws are not altered or modified by the Commissioner does not warrant the view that that part must be deemed to have been passed and to have come into operation. If the Municipality does not pass a resolution bringing the bye laws into operation there is no bye law in existence in the eye of the law (*Beaumont CJ and Wasswosew J*) **EMPEROR SHRINBAI SORABJI**

42 Bom LR 1060

—S 50 (2) (f)—Public "street"—Sub-soil—If vests in Municipality—Public street converted to private street—Effect on right of owner to land. See 1939 Dig Col 89 **CHHOTALAL PANACHAND v BOROUGH MUNICIPALITY**

187 IC 166 = 12 B B 417

instruction—May—Meaning

user to impose—Specific legisla

—If necessary

d in Cl (1 a) of S 59 of the

sul—When wrongful—Suit for damages—Cause of lines—Offence

The scope and purpose of S 36 (2) (e) of the limited to offences clause cannot to a case of an not in relation

**BOMBAY FINANCE ACT (1932) Part VI.**

to any breach of duty by a police officer as such but as a member of a public body. Where a police officer entices away a married woman employed as a sweeper in the police lines and thereby commits an offence under S 498,

190 I C 447—A I R 1940 Sind 192

**BOMBAY FINANCE ACT**

1939) Part VI—Scope—If movable Property Tax—If capital value of lands and India Act (1935) S 100 (1), S 9

Part VI of the Bombay Finance Act of 1932, as amended in 1939 is not *ultra vires* the Provincial Government and the Urban Imm imposed by that Act is a valid tax and buildings imposed on the ow assessed by a somewhat arbitrary standard which is not dependent of the asses-ees or on the capital. It is not a tax upon income of the Act imposes the tax on lan not on income and the basis of This is an arbitrary basis which well for ascertaining capital value income. The fact that some on the small owner and that an all where the property is shown to

ascertained by question falls w List 3 of S 10 1935 and does Federal List India Act

*Kania J*—If land and buildings are treated as investments and the return as income is taxed it is a tax on income. On the other hand if the tax is on the lands and buildings themselves and the assessment is on a standard named by the legislature which may fluctuate or vary on the produce or income from it it would be tax on the property. The measure of the tax is not itself the test. From the fact that the owner is liable to pay the tax it does not follow that the tax is income tax. The impugned tax is not a tax on income (*Beaumont, C J Broomfield and Kania JJ*) SIR

**BOMBAY H O (O S) RULES R 534**

dismissed with costs—Meaning—Defendants—If entitled to separate sets of costs or only one set See DEGREE—CONSTRUCTION 42 Bom L R 878

**BOMBAY HIGH COURT (INSOLVENCY) RULES R 52 B (2)**—Affidavit in opposition to insolvency notice—If to be filed by debtor personally—Affidavit by constituted attorney—Sufficiency

There is nothing in R 52 B (2) of the Bombay

42 Bom L R 948

—R 52 B (2)—Set off—Validity—Insolvency notice by several judgment-creditors—Set off available

rejecting the memorandum and insisting on a vakalat nama (*Beaumont C J and Sen J*) AMEEDAS KASHIBHAI v VADILAL CHHAGANLAL

I L R (1940) Bom 510—190 I C 95—13 R B 96—

42 Bom L R 515—A I R 1940 Bom 272

—(1936) R 138—Scope and effect of—Reply to counter claim—Duty to put in written statement in reply

R 138 of the Bombay High Court (Original Side) Rules applies in terms to any defendant to a counter claim and in every case in which a counter claim is filed there is an obligation on the defendant or defend

BOMBAY v GANPAT MANOHAR.

188 I C 324—12 R B 321

**BOMBAY HIGH COURT (APPELLATE SIDE) RULES**—Costs—Taxation—Practice—Suit or appeal

original side scale in appellate side of attorney—Order for taxation—make—Suit for costs

dy open to an attorney who claims costs on the original side scale in an appellate side matter on the basis of an agreement made by the client to pay such costs, is to bring a suit upon the agreement he relies on to get that agreement established

# BOM HC (OS) RULES, Table of fees Item 56

Court and to ask for an order for taxation and for payment of the bill when taxed. It is not open to a judge

Table of fees, Item 56—Construction and scope—Unless otherwise ordered—Discretion of trial judge in allowing costs of solicitor

Under item 56 of the Table of Fees given in the Bombay High Court Rules (Original Side), costs for *ex parte* short causes, "unless otherwise ordered" confer a complete discretion upon the trial Judge, and it is not desirable that the appellate Court should seek to limit the grounds upon which that discretion should be exercised. It was contemplated that the fixing of lump

sum of Rs 12,000 000, the defendants who were residents of Arabia remained *ex parte*. An effort to serve

should have been taxed or else a sum should be allowed which would provide reasonable remuneration for solicitors and also cover the out of pocket expenses. sum of Rs 650 was allowed as the lump sum costs (Beaumont, C J and Kama, J) ABDUL LATIF KHALAF ABDULLA 42 Bom L R 578—

BOM REG —Ex rists' Distr Judge's Court.

S 4 of the Bombay Regulation XIII of 1830 gives authority to the Jagirdar to execute his own decrees. That does not mean that the sale of land of an agricultural

# BOM LAND REVENUE CODE (1879), S 83

TANSHET. I.L.R. (1939) Bom 713=186 I.C. 643=12 R.B. 357=A.I.R. 1940 Bom. 15  
—Ss 8 and 10—Scope—Permanent tenant of Khots lands—Transfer by sale—Absence of consent of Khots—Effect—Status of transferee—If mere trespasser or ordinary tenant. See 1939 Dig, Col 91. GAFUR USMAN v. SAKHARAM TANSHET. I.L.R. (1939) Bom 713=186 I.C. 643=12 R.B. 357=A.I.R. 1940 Bom 15.

# BOMBAY LAND REVENUE CODE V OF 1879)

—Construction—Rule of strict construction. See 1939 Dig, Col 91. RAICHAND GULAB CHAND v. SECRETARY OF STATE. 185 I.C. 495=12 R.B. 242.

—S. 48—Applicability—Altered assessment—When leviable—Intention to use or actual use. See 1939 Dig, Col 92. RAICHAND GULAB CHAND v. SECRETARY OF STATE. 185 I.C. 495=12 R.B. 242.

—S 65—Applicability to alienated land.  
S 65 of the Bombay Land Revenue Code, though in terms applies to unalienated land, can be made applicable to alienated land (Beaumont, C.J.) BAI KABA v. RAMNIKAL SUNDARLAL. 42 Bom L.R. 747=A.I.R. 1940 Bom 342.

purposes—Permis-  
en a landlord and  
alter the character  
permanent tenant  
the presumption in  
the Code are really  
governed not by the general law but by the Land Revenue Code. Such a tenant is not entitled to use the land for non-agricultural purposes without the permission of the Collector under S. 65 of the Land Revenue Code. He can do so under the general law.  
BAI KABA v. RAMNIKAL SUNDARLAL. 42 Bom L.R. 747=A.I.R. 1940 Bom 342.

## BOMBAY LAND REVENUE CODE (1879), S 83

93 SURYAJIRAO v SHIVAKACHARU

186 I.C. 445-12 B.B. 335

—S 83—*Presumption under—Consistency*

The presumption under S 83 is a presumption of fact. It is a presumption that the tenancy had its origin at some date within a period of twenty years which cannot be more precisely ascertained. By a tenancy's antiquity the section does not intend any reference to remote ages in the past or to "time immemorial" in the sense of the English law. It is to be given the practical meaning appropriate to its context and afforded by the limits within which living testimony to past facts is necessarily restricted. Where the tenancies are not proved to have been in existence before 1892

## BOMBAY MUNICIPIAL BOROUGHS ACT (1925) S 73

Under S 187 of the Bombay Land Revenue Code a claim for recovery of dues in respect of toll contracts stands on the same footing as a claim for the recovery of arrears of land revenue, and a claimant in respect of such arrears can claim preference under S 187.

in  
year  
year  
MA  
APF

Arrears due under—Right to preference—If stand on same footing as arrears of land revenue. See BOMBAY LAND REVENUE CODE, SS 137 AND 187.

42 BOM.L.R. 1123

—S 189—*Applicability—Mutation proceedings*  
S 189 would apply as much to an enquiry relating to

—Propriety of—Just and reasonable rate—What is  
See 1939 Dig., Col 93 SURYAJIRAO v SHIVAKACHARU  
186 I.C. 445-12 B.B. 335

—S 83—"Usage"—Meaning of—Evidence See

## BOMBAY LAND REVENUE RULES, R 91—

Assessed—Meaning of. See 1939 Dig., Col 95  
RAICHAND GULAB CHAND v SECRETARY OF STATE  
185 I.C. 495-12 B.B. 242

(IV OF  
, Bombay  
of cattle  
without

Dig., Col 93 DATTATRAYA v SADASHIV

185 I.C. 839-12 B.B. 271

—Ss 86 and 87—Co-sharers of registered as sharers in Village Form khatedar for share of land revenue remedy. See 1939 Dig., Col 91 v TRIMBAK SHRIDHAR

185 I.C.

—S. 133—Sanad a Order granting sanad—If sion against grantee of granting sanad—If to b Art 14 See 1939 Dig VIVEKRAMJI

—S 135 J—Entry in tion—Property of inam hold time of preparation

the aforesaid section is not v that when the record-of rig of the inam village was a m being managed by the Collec detailed and reliable evidence of the manner in which and the basis on which an increase of rent was made by

It cannot be held that the provisions of S 1 of the Bombay Markets and Fairs Act conflict

and those turned

words of the Municipality the words cannot be construed as meaning supplied to that is, connected up with particular premises Under S 73 (x), the Municipi

# BOMBAY HIGH COURT (OS) RULES Table of fees Item 56

Court and to ask for an order for taxation and for payment of the bill when taxed. It is not open to a Judge to refuse to tax a bill on the ground that it is not in the proper form.

DARASHAW

42 Bom L.R. 822 = A.I.R. 1940 Bom 412  
 —Table of fees Item 56—Construction and scope—Unless otherwise ordered—Discretion of trial Judge in allowing costs of solicitor

Under item 56 of the Table of Fees given in the Bombay High Court Rules (Original Side) costs for *ex parte* short causes unless otherwise ordered confer a complete discretion upon the trial Judge and it is not desirable that the appellate Court should seek to limit the grounds upon which that discretion should be exercised. It was contemplated that the fixing of lump sum would save expenses and discourage unnecessary work and would at the same time provide reasonable remuneration for the solicitor. In a suit to recover sum of Rs 15,000 odd the defendants who were Arabs of Arabia remained *ex parte*. An effort to serve them in accordance with the provisions of O.S.R.C.P. Code, proved abortive and ultimately substitute service had to be effected and as the defendants' Arabians many documents had to be translated into Arabic. The plaintiff's solicitors had to do a good deal of work substantially more than they would have to do normally on an *ex parte* short cause. The solicitors filed an affidavit setting out in detail the out-of-pocket expenses incurred by them in the suit. The trial Judge allowed costs for the defendants.

Judge's Court

S 4 of the Bombay Regulation XIII of 1830 gives authority to the Jagirdar to execute his own decrees. That does not mean that the sale of land of an agricultural

# BOMBAY LAND REVENUE CODE (1879), S 83

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 GAFUR USMAN v. SAKHARAM TANSHET  
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 185 I.C. 495 = 12 R.B. 242

—S 65—Applicability to alienated land  
 S 65 of the Bombay Land Revenue Code though in terms applies to unalienated land can be made applicable to alienated land.

—S 65—Make any other improvements thereon for the better cultivation of the land—Meaning of—Erection of godown to store agricultural produce such as grass for being sold in favourable market—If protected—Altered assessment—If justified on ground of non-agricultural use. See 1939 Dig Col 92  
 RAICHAND GULAB CHAND v. SECRETARY OF STATE  
 185 I.C. 495 = 12 R.B. 242  
 —S 65—Scope—Kinds of improvements—Frustration of—If exhaustive. See 1939 Dig Col 92

BUDDHAR CO-OPERATIVE CREDIT SOCIETY v. GANGA DHAR NARAYAN

governed not by the general law but by the Land Revenue Code. Such a tenant is not entitled to use the land for non-agricultural purposes without the permission of the Collector under S 65 of the Land Revenue Code. He can do so under the general law. See 1939 Dig Col 92  
 BAI KABA v. RAMNIKLAL  
 42 Bom L.R. 747 = A.I.R. 1940 Bom 342

BOMBAY E.H. 1880) S 6—Mortgagee with from tenant after and status of vendee. See 1939 Dig Col

reason why the presumption under S 83 should not apply.

**BOM. LAND REVENUE CODE (1879) B 83**

93 SURAJIRAO SHIVAKACHARU  
186 I.C. 445-12 R.B. 335  
—B 83—Presumption under—*Conditio*

First condition is not excluded by showing that the  
given the practical meaning appropriate to its context

—B 83—Rent—Rate—Demand for enhanced rate  
—Propriety of—Just and reasonable rate—What is  
See 1939 Dig. Col. 93 SURAJIRAO v SHIVAKACHARU  
186 I.C. 445-12 R.B. 335  
—B 83—Usage—Meaning of—Evidence See  
1939 Dig. Col. 93 SURAJIRAO v SHIVAKACHARU  
186 I.C. 445-12 R.B. 335

granting sanad—If to be set aside—Limitation Act  
Art. 14 See 1939 Dig. Col. 95 NARBHERAMJI v

**BOM. MUNI. BOROUGHSACT (1925) B 73**

Under S 187 of the Bombay Land Revenue Code a  
claim for recovery of dues in respect of toll  
contracts stands on the same footing as a claim for the  
— of arrears of land revenue and a claimant in  
— of such arrears can claim preference under  
7 of the Code if he proves that a process was issued  
in respect of a demand for the arrears of the current  
or that year although the sale takes place not that  
year but only afterwards (*Kangnekar J*) HAN  
MANTAGUDA NAGANCOUDA v SHIVAPPA DUND  
APPA 42 Bom. L.R. 1123  
—B 187—Scope and effect of—Toll contract—  
Arrears due under—Right to preference—If stand on  
same footing as arrears of land revenue See BOMBAY  
LAND REVENUE CODE, SS 137 AND 187

42 Bom. L.R. 1123  
*ty—Mutation proceedings*  
as much to an enquiry rela-  
under Chap. 10 A as to a  
try within the provisions of  
*d Weston J*) ASSUDOMAL  
43 HOTHAND  
—190 I.C. 222-13 R.B. 73-  
861-A.I.R. 1940 Sind 100

**BOMBAY LAND REVENUE RULES B 91—**  
Assessed—Meaning of See 1939 Dig. Col. 95  
RAICHAND GULAB CHAND v SECRETARY OF STATE  
185 I.C. 495-12 R.B. 242

**BOMBAY MARKETS AND FAIRS ACT (IV OF  
1862) B 1—Scope—If conflicts with S 139 Bombay**

1 L.R. (1940) Bom 522-42 Bom. L.R. 584-  
A.I.R. 1940 Bom 306

BOM MUNI BOROUGHS ACT (1925), S 80

BOM. PREV OF ADULT. ACT (1925), S 4

If individual notice is given under S 81 the presumption which may be raised under S 80 may be raised, and it can be under S 80 was properly and that all formalities required for the proper assessment of the tax were followed by the municipality (*Datt, J C and Lobo J*) *JAMNADAS v EMPEROR* 187 IC 127=12 ES 223=41 Cr LJ 401 (2)=A IE 1940 Sind 42.

—Ss 105 and 203—Construction and scope—Distress for taxes—Limitation—Suit under S 203

and it would apply even if the period for bringing a suit under S 203 has expired (*Broomfield and Davat J J*) *SURAT BOROUGHS MUNICIPALITY v SARIFA*

—S 105—Limitation—Distress for taxes—Conditions for taking liability by distress—Borough Municipal Corporation

—Ss 110 and 111—Scope—Jurisdiction of Civil Court—Decision of Magistrate in appeal—Suit in Civil Court—Maintainability in the absence of appeal or revision to superior Court

The words of S 111 of the Bombay Municipal Boroughs Act that the decision passed on appeal by the Magistrate is at the instance of the party subject to

distress. Those words seem to cover merchandise and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. A motor car or a motor lorry or a horse drawn vehicle or a hand propelled vehicle such as a hand cart, though containing merchandise and left standing in a street cannot be said to come within the sub-section. A vehicle does not fall within the mischief of S 152 (*Beaumont, C J and Waddell, J*) *EMPEROR v HASAM MAMAD* 42 Bom LR 785=A IE 1940 Bom 378

—S 203—Scope—If controls S 105—Distress for taxes after expiry of time fixed for suit—Permissibility—Boroughs Act Ss 105 42 Bom LR 960

SHARE AND STOCK  
—SECTION 297—  
—Directors' power to alter—When to be exercised—Power to alter making up price in respect of one broker's transactions only

R 297 of the Bombay Native Share and Stock Brokers Association enables the Board of Directors of the Association under exceptional circumstances to alter the making up price which has been fixed in respect of

—S 110 (2) (b) (i)—Applicability and construction—Water tax imposed in the form of rate on buildings or lands See 1939 Dig, Col 96 *BOROUGH MUNICIPALITY OF AHMEDABAD v AHMEDABAD*

—S 4 (1) (a)—Selling as "vinegar" synthetic vinegar produced not by fermentation but by diluting

Introducing into a street a lorry on wheels for sale upon it does not amount to setting within the meaning of S 152 (1) (a) of the Municipal Boroughs Act. That sub-section making some form of addition or annex, more or

ld so as the Act, idence who or was fer mentation or brewing but merely by diluting acetic acid

the street. It is directed for house in the street, the street by making some shop (*Beaumont, C J*) *EMPEROR v HASAM MAMAD* =A IE 1940 Bom 378  
"other thing"—Meaning of

**BOMBAY PREVENTION OF ADULTERATION ACT (1939) S 4**

with water. The defence produced no evidence what  
ever.

*Held* that the accused was guilty under S 4 (1) (a)  
(*See J C and O'Sullivan J*) PARSRAM TEKCHAND  
v. EMPEROR I.L.R. (1940) Kar 232 =  
190 I.C. 159 = 13 B.B. 54 = 41 Cr.L.J. 839 =

—S 4 (1) (b)—Scope—Adulterated ghee taken  
from sweetmeat shop out of frying pan—1 resumption  
*See* 1939 D.G. EMPEROR. I

—S 13—  
(c)—Particulars—Summons—Form and contents of—  
Essentials.

Under S 13 of the Bombay Prevention of Adultera-  
tion Act every summons should specify the particulars

per summons. It is not enough to say that the offence  
has been charged under a particular section. The title  
of the Act and not merely an alteration of it must be  
set out and the accused must also be told what he is  
said to have done which he ought not  
summons to an accused charged under  
(c) of the Bombay Prevention of Adul-  
teration Act addressed to the accused and said

Whereas it is necessary for you to  
for answering the charge for an of  
Bombay Prevention of Adulteration Act  
you are hereby ordered to be present  
pleader before the Honorary Magist-  
rate, the date the 30th of November 1939 A.D."

*Held* that the summons was hopelessly inadequate and  
was such as to cause prejudice to the accused. The  
accused must be told what the offence charged was  
namely, that he sold or offered or exposed for sale as  
eatable food a substance which was not eatable (*Beau-*  
*mon, C J and Waddell*  
SHANLAL JAMNADAS

**BOMBAY PREVENTION OF  
(IV OF 1887) S 3—Applica-**

*Acting*—Meaning of

The expression "using or keep" in the  
Bombay Prevention of Gambling Act means having a  
right to use or keep as in S 4 (a) and if the accused

keeping or using the passage that is presumably the  
landlord (*Beaumont C J and Sen J*) EMPEROR v  
IBRAHIM HAJI ABDUL RAHMAN

I.L.R. (1940) Bom 322 = 188 I.C. 516 =  
12 B.B. 508 = 41 Cr.L.J. 571 = 42 Bom.L.R. 161 =  
A.I.R. 1940 Bom 129

—S 3—Common gaming-house—Using—Mean-  
ing of—Passage—If common gaming house. *See*  
D.G. Col 97 KRISHNAJI MADHUSUDAN  
v. EMPEROR 186 I.C. 242 = 12 B.B.

41 Cr.L.J. 273 = A.I.R. 1940 B.

Y D 1940—9

**BOMBAY PREVENTION OF GAMBLING ACT (1887) S 4**

—S 3—Instruments of gaming—Marked coin. *See*  
1939 I

PEROF  
" " " " " "  
" " " " " "  
" " " " " "  
*See* *per* *per*

—Ss 4 (a) and 5—Applicability and con-  
struction—Place—Passage leading from house  
person having the use of—Meaning  
found gain in passage—Offence  
for commission under S 4 (a) or 5  
words person having the use of in  
S 4 (a) of the Bombay Prevention of Gambling  
Act must be  
words  
person having

persons who resort to such premises for the  
purpose of gaming. The accused was re-  
ceiving bets in a passage on the ground  
floor of a house in a road A marked

*Held* (1) that the passage in question was a  
place within the meaning of S 4 (a),  
(2) that since there was no evidence to show  
that the accused had got anything in the nature  
of a licence to use the passage from a person  
entitled to give such licence he could not be

common gaming house and the accused, not hav-  
ing discharged that burden, was properly con-  
victed under S 5 of the Act (*Beaumont C J*  
*and Sen J*) EMPEROR v. GULAM HUSEIN

I.L.R. (1940) Bom. 105 =  
I.C. 148 = 12 B.B. 310 = 41 Cr.L.J. 253 =  
Bom.L.R. 1326 = A.I.R. 1940 Bom 62

—Ss 4 and 5—Convictions under, on same facts  
—Separate sentences—Legality

Where the prosecution have relied upon the same  
facts and upon the same acts of the accused to prove  
that the offences under Ss 4 and 5 were committed the  
convictions under both sections may be confirmed but  
there should be one punishment for both. He should



## BOMBAY PREVENTION OF GAMBLING ACT (1887), S 4

—Ss 4 and 5—Prosecution under—Evidence—Failure to examine panchas and to produce independent evidence as to what was found at raid—Effect. See 1939 Dig., Col 98 BAPTIST DE SOUZA v EMPEROR 185 LC 203=12 R B 229=41 Cr LJ 127

passage in ground floor—Passage used by accused for going to and from his room—Conviction under Ss 4 (a) and 5—Sustainability

The accused occupied a room on the second floor of a certain building and was found by the another person in a passage on the ground building. He was writing something on paper and taking with the other person and the passage instruments of gaming were for passage. He was convicted under Ss 4 (a) a Prevention of Gambling Act

Held, (1) that in the absence of evidence to the contrary the accused had only a right to pass and re-pass along the passage and there being no evidence that the accused had a right to the use of the passage within the meaning of S 4 (a) and his conviction under S 4 (a) could not therefore stand, (2) that since the accused did not give any evidence to prove that the passage was not a common gaming house to rebut the presumption arising under S 7 of the Act on the facts

## BOMBAY PREVENTION OF GAMBLING ACT (1887), S 8

tional Superintendent of Police An additional Superintendent of Police appointed under S 6 of the Bombay District Police Act, as amended in 1920, has no power to authorise the issue of a search warrant under S 6 of the Prevention of Gambling Act Where a search warrant

—Ss 6 (d) and 8—Money found in coat pocket of accused convicted of gaming—Liability to forfeiture

It was not the intention of the Legislature that to the the the the sed of

any satisfactory explanation by the accused that this money cannot be seized under S 6 and was not connected with the gaming of which the accused had been convicted (Dass J C) BHAGWANDAS v EMPEROR I L R (1940) Kar 150=187 LC 78=12 R B 219=41 Cr LJ 399=A I R 1940 Sind 28

—S 7—Applicability—Conditions—Presumptions—When raised

Under S 7 of the Bombay Prevention of Gambling Act, certain presumptions arise when two things are

12 R B 229=41 Cr LJ 127

19 R B 608=41 Cr LJ 571=42 Bom L R 161=A I R 1940 Bom 129

Finding of marked coin—Presumption. Col 98 KRISHNAJI MADHUSUDAN v

186 LC 242=12 R B 338=41 Cr LJ 273=A I R 1940 Bom 18

—Offence.

## BOMBAY TOLL ON ROADS ACT (1887) S 13

186 I C 883-12 R S 221-41 Cr L J 385-

AIR 1940 Sind 2.

—S 13—'Mere skill'—Meaning of—Game cards pettinata for money stakes—If exempt and

## BUDDHIST LAW (Burmese)

R.E. 196,  
tetpa pro-  
if any

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Neither  
operty of  
SAN YI v  
R.E. 534-  
tang 286  
ith of both  
Rights of  
—Applica-

l wife die  
aving any

**BOMBAY TOLL ON ROADS AND  
ACT (III OF 1875) S 3**—Levy of toll  
incident of ownership of land—Toll—If  
property See REGISTRATION ACT S 17 (1) (b)

—(Burmese)—Husband and wife—Joint property

**BOUNDARIES**—Fixation of—Tid  
river given as boundary—Boundary  
fixed—Rule

13 R.E. 54-AIR 1940 Rang 126

—(Burmese)—Husband and wife—Property  
acquired during coverture—Mutual rights—Insurance  
policy in the name of husband—Extent of wife's right  
therein

The general rule of Burmese Buddhist Law with refer  
ence to the rights of husband and wife to property ac

belongs to  
h water  
mark, that is the line of the medium between the  
spring and the neap tides throughout the year. Such  
medium high water mark is not to be taken as the same  
thing as the middle line of the river *ad medium flum  
aque*. Where a tidal and navigable river is given as

that ancestral property remains undivided (*Dunk ey*) —with a was a big lot to go to include both to do

# **BUDDHIST LAW (Burmese)**

—(Burmese)—*Marriage—Denial of—Burden of proof*

Where the plaintiff denies that he had ever married the defendant and proves that he had married another wife, and calls witnesses to say that that lady was the only person whom he had ever treated or who had ever been treated as such, he cannot be shown to have

clearly point to the existence of a valid marriage, according to Burmese Buddhist Law between the parties (*Robert, C J and Dunkley, J*) MAUNG MAUNG v MA SEIN KYI 1940 Rang LE 562 = A I R 1940 Rang 181

—(Burmese)—*Marriage—Essentials to be proved*

# **BURDEN OF PROOF.**

As between the parent and the surviving spouse of a child who dies leaving no issue but who lived with his or her parent and whose property is in the possession or keeping of the parent, the parent is entitled to inherit such property under the Burmese Buddhist Law. But the rule will not affect the vested interest of the son in

13 R R 10 = A I R 1940 Rang 120 (F B)

—*Succession—Out of time grandchildren*

Under the Burmese Buddhist Law, an out of time grandchild or out of time grandchildren who are entitled to an equal share with an uncle or aunt in the division

A reputation as regards marriage can only be esta

There are rulings to the effect that where a trespasser

and treated by their friends as husband and wife is relevant. Hence in such cases, the use of such phrases as 'I learnt that they were living together, as man and wife' or 'they were man and wife' are not receivable as evidence. The witness must prove conduct on the part of the man and woman or on the part of their friends

these rulings cannot possibly apply where there could have been no possibility of a *bona fide* belief as to title (*Dalip Singh and Sale, JJ*) AH SAN ALI SHAH BRIJ BHUSHAN LAL 42 P L R 324

—Title to—Buildings erected on another's land—  
Husband building on wife's land—Wife's right to See 44 C W N. 247.

**ON OF LAND**  
—Position in re  
ind

right whatever of claiming a quarter share from her father when her mother has predeceased her. She can have such a right, against the mother if the father dies before her mother. The only circumstances under which the daughter as the orasa child can acquire a vested in-

**BURDEN OF PROOF** See also EVIDENCE Act

—*Consideration—Absence of—Literate executant*

When a person who is literate and does money the execution of a document consideration, the onus of proving is upon him and not upon his *joon, C J*) MELA RAM v 42 P L R J & K 270

—Marriage—Denial of, See BUDDHIST LAW (BURMESE)—MARRIAGE A I R 1940 Rang 181

was in possession of parent and who lived with parent dying issueless—Who inherits

## BURDEN OF PROOF.

—*Shifting of—Meaning.*

The phrase 'shifting of the onus of proof' is an

the fact that the party on whom the onus lay had produced a certain amount of evidence. All that can happen in such cases is that the Court might hold that the party on whom the onus lay had sufficiently discharged it by production of the evidence concerned and that if the opposite party wants to prove any fact to rebut the evidence produced by the party on whom the onus lay then the onus of proving the additional fact must lie on the party which relies on it.

MAHABIR S. SARJU

1940 E

—*Suit on handnote—P*

*blank signed paper to another.*

*Security for a loan due to that other—Onus.*

Where in a suit on a handnote by the payee thereof, the defendant pleads that he made an endorsement or signature on a blank paper which was intended to operate as a collateral security for a loan advanced by a third person to whom he delivered the paper, and the latter had unauthorisedly inserted the name of plaintiff as payee, the burden is on him to explain the handnote.

(*Aga*

KAIL)

right

Where the

these rights are

Alltop, Ganga

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Withholding of evidence, relying on onus—Propriety—

Duty of parties

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## BURMA CO-OP. SOCIETIES ACT (1927), R. 15.

Income-tax Act (XI of 1922).

Land and Revenue Act (1876).

Laws Act (XIII of 1898).

Municipal Act (III of 1898).

Prevention of Crime (Young Offenders) Act (III of 1930).

Rural Self Government Act (IV of 1921)

Tenancy Act (X of 1939).

BURMA ADAPTATION OF LAWS ORDER (1937), Cl. 10—Effect on S. 8, *proviso 2*, *Burma Income-tax Act*.

CL 10 declares in the plainest terms, that a right, which has already accrued prior to the Government of Burma Act coming into force, is not affected by any

purchaser became possessed of the securities does not arise. The interest on securities issued before the Government of Burma Act came into force cannot be made liable to income tax in Burma throughout the

SEA ACT  
Schedule in—  
Damage to  
attract or tort

potatoes by  
a Carriage  
liable to  
owing to

## BURMA CO-OPERATIVE SOCIETIES ACT (VI OF 1927) S. 50 Excludes under (1931), R. 15—Award

S 51—Recovery of sum due by a member of Co-operative Society—Availability of Ss. 46 and 47 of the Land and Revenue Act. *See* BURMA LAND AND REVENUE ACT, SS 46 AND 47 AND BURMA CO-OPERATIVE SOCIETIES ACT, S. 51. 1940 Rang L.E. 250.

R. 15—Society registered after granting loan—Debtor making payments both before and after

A. C. I. V. CHETTYAR FIRM, 1940 Rang L.E. 659.

## BURMA ACTS

**BURMA COURTS ACT (1922), S 11.**

*tion—Inference and effect—Jurisdiction of Civil Courts in respect of the transaction.*

towards the principal and interest, it must be inferred that the debtor agreed that the transaction entered into by him with the society before its registration should be binding upon him.

Hence the registration of the loan advance of the Burma Co-operative Society, Ltd v KALI KUMAR NATH 1910 B.L.R. 77-199 C. 200-12 D. 15.

**BURMA**

*Powers of concurrent findings of fact on remanded issue*

It would be anomalous to hold that, whereas the

findings of the lower Courts are not decisions. Hence, High Court acting under S 11 of the Burma Courts Act can interfere with the concurrent findings of facts on a remanded issue lower Courts have sent from the (Mackney, J.) UJANSI.

**BURMA EX**

*and 41—Charities under S. 4*

unable to account satisfactorily does not appear to have any application to the common case under S 30 (a) where the charge is one of possession of a larger quantity of an excisable article than is allowed under the Act. In prosecutions under S. 30 (a) it is necessary to prove such possession, and there is no room, or need for any proof.

Evidence Act but S. 44 of the Excise Act may be of use-

**BURMA INCOME-TAX ACT (1922), S 33**

*it—If should be taxed as income of Hindu undivided family.*

and taxed as part of son's personal income and not as income of Hindu undivided family even if he has a mother and sister still alive. (Roberts, C. J., Mya Bu

*Criminal charges against partners and manager—Expenses incurred in defending same successfully—business lost entirely from*

undertaken by persons to protect their good name and they have succeeded, they can be said to have suffered

conspiracy to commit offences against the Excise Act, brought against them in Calcutta. All the charges were finally dismissed. The partners claimed that the

was a liability existing between themselves and the firm had no separate personality. (Roberts, C. J., Mya

*as alleged to of Commis*

under Ss. 23 except in the within the commissioner

of Income-tax cannot in law, in exercise of his power of

## BURMA INCOME TAX ACT (1922), S 33

—Ss. 33 and 66 (2)—*Refusal to review under S. 33—Reference under S. 66 (2), if lies.*

S 33 makes no mention of the right of an assessee to move the Commissioner to take action but as the Commissioner may take action of his own motion the assessee must have the right of petition to the Commissioner.

189 IC 318—13 RR 30—1940 ITE 382—  
AIR 1940 Rang 175 (SB).

—S 34—"Escaped assessment"—*Meaning.*

Income has "escaped assessment" within the meaning of S 34, when it has not been assessed in the assessment under consideration, it is immaterial that it has been assessed in some other assessment. (*Roberts, C. J., Mya Bu and Dunkley, JJ*) COMMISSIONER OF INCOME-TAX, BURMA v VEDNATH SINGH

1940 Rang LR 426—186 IC 807—12 RR 290—  
1940 ITE 222—AIR 1940 Rang 65 (SB).

—S 66 (2)—Reference, if lies, on refusal to review

189 IC 318—13 RR 30—1940 ITE 382—  
AIR 1940 Rang 175 (SB).

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189 IC 318—13 RR 30—1940 ITE 382—  
AIR 1940 Rang 175 (SB).

## BUR. RURAL SELF GOV. ACT (1921), R. 55.

S. 13 of the Burma Laws Act does not apply to Indian or Burmese Christians and an adopted child is not an heir entitled, on an intestacy, to inherit the estate of his deceased adoptive parent, such parent dying a Christian. Adopted and illegitimate children cannot be included under S. 27 of the Succession Act. (*Roberts, C. J. and*

CYRIL & J. D. ATTAIDES  
1940 Rang LR. 654

for.

The position of Councillors with regard to municipal fund is in law that of trustees. As trustees they would be bound to exercise over trust properties the same degree of caution and care as a man of ordinary prudence would exercise in case of his own property. They would be liable for any loss of the trust fund which was facilitated by the gross neglect of their own duties by their own acts or by any other agency. The President of a Municipal Committee appointed a tax collector even though he had no authority to do so without taking any security from him, though many reports against such person were made by the secretary

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for.

AIR 1940 Rang 8.

Under S. 3 of the nly pass a sentence of unishment to which the under the Penal Code, nly pass a sentence of risonment (*Roberts, HE KING v KYAW AYE*, 744—187 IC 405—32—41 Cr L J 455—  
AIR 1940 Rang 81.

SELF-GOVERNMENT ACT under R. 55—*District Judge designata—Right to appeal*

under In performing the functions laid upon him by the rules the District Judge does not act as a Court and his

**BURMA TENANCY ACT (1939), S 14**

proceedings are not subject to appeal or revision by the High Court because he acts as a *persona designata*. (*MacKney, J.*) **U AUNG MYIN v DISTRICT AND SESSIONS JUDGE, HENZADA**

188 I C 795 = 13 R R 19 = 41 Cr L J. 687 =  
A I R 1940 Rang 148.

**BURMA TENANCY ACT (X OF 1939), Ss 14 and 15—Duty of Rent Settlement Officer**

The Act does not say that the Rent Settlement Officer must strike an average and then, tinkering with the results lest they appear ridiculous, it enjoins an inquiry into each tenancy and the determination of a proper figure by certain specified means (*Roberts, C J, Blyu Bu and Dunkley, JJ*) **MAUNG PYU, In the matter of**

1910 Rang L R 325 = 188 I C 422 = 12 R R 365 =  
A I R 1940 Rang 84 (S B.)

—S 15—'Such other factors as may seem relevant'  
—Matters falling within

**CALCUTTA MUNICIPAL ACT (1899), S. 27**

promissory note, it is not permissible for the defendant to set up an oral agreement between him and the plaintiff that the promissory note created no liability or obligation till their partnership accounts were adjusted. (*McNair, J.*) **GOPIRAM BHOTICA v. BALMUKUND BANSHIDHAR.**

44 C W N. 811

—Chap. XIII A, R. 5 (b)—*Form of affidavit.*  
Under R. 5 (b) of Chap. XIII A of the Calcutta High Court Rules, the affidavit of the defendant should be either on oath or solemn affirmation (*McNair, J.*) **MAHADEOLAL v. DISSISWARLAL.**

44 C W N. 808.

—Chap. XIII-A, Rr. 6 and 9—*Leave to defend—Grant of—Merits of defence—Duty of Judge to consider.*

A Judge who is hearing an application under Chap. XIII A of the Rules of the Calcutta High Court should consider all the facts which are brought before him in the affidavits and direct his attention as to whether the

44 C W N. 800.

his report—Confirmation of—  
ferred to him. See 1939 Dig,  
J A LOBO 187 I C 252 =

12 R C. 554

R 77, Item 22—*Attachment by  
ft—Subsequent compromise of claim  
of foundage—C. P. Code, S. 46.*  
by a Court at Benares under S. 46,  
Registrar of the High Court in

**MAUNG PYU,**  
1940 Rang

entertain an originating summons  
jurisdiction to make an adminis-  
regard to the estate in respect of wh

(XVIII OF  
Tribunal re

Acquisition  
12 MAHESH  
17 I C 872 =  
12 R C 623  
acquisition—  
12. MAHESH  
87 I C 872 =  
12 R C. 623.

. II OF 1899),  
action agent—

ity—Relief claimed by beneficiary or trustee against  
agents of trustee.

S 27 of the Calcutta Municipal Act provides that in  
each nomination paper the candidate shall sign a declara-

**CALCUTTA MUNICIPAL ACT (1923), S. 46**

—S 46—Election petition—Returning officer—If necessary party.

The Returning officer is not a party who should be joined in an election petition. (*McNair, J.*) MAHOMED HOSSAIN v. MAHOMED RAFFIQUE

I L R (1910) 2 Cal 230

—S 46 — Plural Councillor constituency—Petition challenging election of one Councillor—Other Councillors if necessary parties

If an election petition challenges the validity of the election of one of the councillors elected to a plural councillor constituency all the other elected councillors of that constituency should be made parties to it. For, if the election of one candidate is void, the entire election in that constituency has to be held afresh. (*McNair, J.*) GIRISH CHANDRA GHOSH v. SUDHIR CHANDRA RAY.

I L R (1910) 2 Cal 212

—Ss 46 and 47—Recount and scrutiny—Order for—Power of Court.

Under the Calcutta Municipal Act, the Court has no power to order a recount and scrutiny of votes. Even if a recount is permissible under the Act, an order for recount should not be made except in cases which are substantiated by specific instances. (*McNair, J.*) SHARFUD DIN AHMAD v. SHAMSUL HUQ

I L R (1910) 2 Cal 373.

—Ss 46 and 47—Rejection of nomination papers—Division of Return and Count—If rejected.

... papers in an ... I L R (1910) 2 Cal 230

—S 127—Letting value of land—Evidence afforded by return or assessment of neighbouring premises—Admissibility—Evidence Act, S 9

In arriving at the letting value of a ... the evidence afforded by the return or

**CALCUTTA MUNICIPAL ACT (1923), S. 371.**

letting value is not the principle adopted by the Legislature in Cl (b). In cases coming under Cl (b) it would not therefore be legitimate to hold that the word "value" in that clause does not mean "sale value" and excludes the same. For finding the "estimated present value of land" the assessor is not bound to find out the reasonable hypothetical rent of the whole premises. Observations of Roy, J. in AIR. 1927 Cal. 659, Disapp. (*R. C. Mitter and Mahamad Akram, JJ.*) CORPORATION OF CALCUTTA v. PROVINCE OF BENGAL.

I L R (1940) 1 Cal. 168=189 I C 717=

13 R.C. 107=44 C.W.N. 165=

A I.R. 1940 Cal. 47

—S. 127 (b)—Valuation of land—Principle as to

It is a well-established principle in rating that property must be valued as it exists at the time when the rate is made, with all the existing circumstances *rebus sic stantibus*. Prospective appreciation or depreciation cannot be taken into account by the rating authority, nor can a hypothetical state of things be assumed. The Legislature intended to give effect to this principle only when it used the phrase "land valued with the building" in S 127 (b). The land is not to be regarded as bareland. It is to be taken in its present disposition and valued (*R. C. Mitter and Mahamad Akram, JJ.*) CORPORATION OF CALCUTTA v. PROVINCE OF BENGAL.

I L R (1940) 1 Cal 168=189 I C 717=

13 R.C. 107=44 C.W.N. 165=

A.I.R. 1940 Cal. 47

—Ss 141 and 139—Objection as to liability to assessment—Jurisdiction of Small Cause Court. See 1939

—S 127 (a)

building let out and owner—Method of

Where a small p to tenants and the

the owner himself partly under S 127

(b) The assesse

(b) only AIR 193

and Mahamad Akram, JJ) CORPORATION

CALCUTTA v PROVINCE OF BENGAL.

I L R (1940) 1 Cal. 168=189 I C

13 R.C. 107=44 C.W.N.

A I R 1940 Cal

—S 127 (b)—Beneficial occupation—M of assessment

orporation on of owner for

in law for burgh, JJ



## CALCUTTA MUNICIPAL ACT (1923), S 371.

CHANDRA SEKHAR v CORPORATION OF CALCUTTA  
186 I C 776=12 R C 518=  
44 C W N 191=A I R 1940 Cal 67

—S 371—Selection of place for disposal of rubbish  
—Duty of Corporation—Interference by Civil Court

Per Mukherjee, J.—S 371 of the Calcutta Municipal Act does not merely give a permissive right to the Corporation to do certain things it enjoins the performance of certain obligatory duties. It cannot be said therefore that the powers under the section must be exercised without creating a nuisance. As this is an obligatory duty, it must be performed but both in the selection of the site for disposal of the rubbish as well as in the method of doing it, the Corporation is bound to see that the least nuisance is created. The Corporation has questioned from this standpoint these matters it comes to a point where the site for disposal of its rubbish is in the absence of any mala fides on the part of the Corporation, it is not interfered with by Civil Court.

(Mukherjee and Roxburgh, JJ) CHANDRA SEKHAR v CORPORATION OF CALCUTTA 186 I C 776=12 R C 518=  
44 C W N 191=A I R 1940 Cal 67

—S 371 (1)—Place of dumping—If must be public or belong to Corp

Under S 371 (1) of the Calcutta Municipal Act, the Corporation is bound to see that the place of dumping rubbish is a public place or belongs to the Corporation. The section does not require that the place should be owned by the Corporation itself. The section

arrangement  
belonging  
them by t

(Mukherjee and Roxburgh, JJ) CHANDRA SEKHAR v CORPORATION OF CALCUTTA 186 I C 776=12 R C 518=44 C W N 191

—S 371 (1), Proviso  
must be express

Engineer as to the selection of a site for disposal of rubbish has no authority taken as an implied sanction or approval. The defect, so far as the sanction is concerned, is in form, not in substance and no Court would on that ground alone stay the hands of the Corporation. But in cases which affect the health and comfort of a large body of rate payers, it is error to take in clear and (Mukherjee and Roxburgh, JJ) CHANDRA SEKHAR v CORPORATION OF CALCUTTA 186 I C 776=12 R C 518=44 C W N 191

—Ss 406 and 407—

in transit at broker  
Even if the accused had been in transit as a broker that would the provisions of Ss 406 and 407 of the Calcutta Municipal Act are wide enough to cover the case. (S K Ghose, J) RAMESWAR NATH SINHA 187 I C 460=44 C L J 460

## CALCUTTA MUNICIPAL ACT (1923), Sch. XVII

—S 498 and Sch XVII, R 62—Grant of permission to build—Effect of—Permission infringing Sch XVII See 1939 Dig Col 114 SHEIKH NIZAMUDDIN v CORPORATION OF CALCUTTA AIR 1940 Cal 11

—S 498 and Sch XVII, R 62—Grant of permission—When becomes effective—Resolution by Standing Committee granting permission to build—Revocation—Power of Committee before issue of permission See 1939 Dig Col 115 SHEIKH NIZAMUDDIN v CORPORATION OF CALCUTTA AIR 1940 Cal 11

removing or abating a nuisance committed by it, the civil Court is not in any way prevented from granting injunction against the Corporation in a proper case of

—S 538—Suit against Corporation for damages for nuisance—Limitation—Limitation Act, S 23 and Art 36

Plaintiff filed a suit in 1938 against the Corporation

period prescribed in the special Act, (S K Ghose, J) AIR 1940 Cal 11

—Sch II Part I, para 3—Offence of personation—Candidate identifying personator after delivery of ballot paper—If guilty

Sch II, Part I, para 3 of the Calcutta Municipal Act

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# CALCUTTA MUNICIPAL ACT (1923), Sch XVII

after cause has been shown by the applicant (*Edgley, J*) **HRIHIKESH DUTT v MUNICIPAL COMMISSIONERS OF HOWRAH** I L R (1940) 2 Cal 69=188 I C 865=13 R O 50=41 Cr L J 689=44 O W N 561=A I R 1910 Cal 292

—Sch XVII, Br 56 and 57—*Requisition to applicant to expose foundations for inspection—Nature of—Second inspection held within 15 days without further requisition—If entitles Corporation to extension of time for issuing order*

If on an application under R 52 erect a building the Corporation issues the applicant to expose the foundations in order that they might be inspected one for information under I 56

I L R (1910) 2 Cal 69=188 I C 865=13 R O 50=41 Cr L J 689=44 O W N 561=A I R 1910 Cal 292

—Sch XVII, R 56(1)—*Requisition for information and documents—Power of Corporation to issue*

ments at any time even after the procedure laid down

ration—*Communication to applicant—Necessity for*  
R 57 contains no express provision on the point whether the order of the Corporation in order to be valid, must be communicated to the applicant but having

a decision on this point, its order must be

with 15 days

The period of fifteen days of Sch XVII refers to **HRIHIKESH DUTT v OF HOWRAH**

# CENTRAL PROVINCES ACTS

188 I C 865=13 R O 50=41 Cr L J 689=44 O W N 561=A I R 1910 Cal 292

—Sch XVII, R 58—*Benefit of presumption—Waver.*

An applicant for permission to erect a building who has become entitled to the benefit of the presumption raised in R 58 of Sch XVII, has a right to continue his building operations even after a belated refusal of his application by the Corporation, and he is not liable to be criminally prosecuted for it. He cannot be deemed to waive this right to immunity in respect of a criminal

ACT (1922), S 5—*Right*

are intended to give a new manner as an action for seduced. The action under S 5 has nothing to do with the parental relations nothing to do with the relation of master and servant, and nothing to do with loss of service or service, and there is no *a priori* probability that S 5 contemplates relief conditioned upon the childbirth or pregnancy or the physical act of copulation disability for service. No d in S 5 (*Lord Thankerton*) **J E BROWNLEE v VIVIAN MACMILLAN** A I R 1940 P C 210

damage done by the trespassing cattle (*Dhople, J*) **CHOKAT AHIR v SURAJ SINGH** 186 I C 182=6 B R 301=12 R P 474=1910 P W N 271=41 Cr L J 257=21 P L T 627=A I R 1910 Pat 299

CAUSE OF ACTION—*Inchoate nature of—Remedy*

r the filing of the suit cause of action nor

**AIR TEM-  
CUTION  
3-Section  
of livestock**

**C P DEBT CONCILIATION ACT (1933) S 12**

The discharge of a debt due under a promissory note executed in Bombay by the Debt Conciliation Board of Central Provinces under the Central Provinces Debt

If a judgment debtor under the Act he is entitled to attachment. The Court attachment on the ground a dishonest debtor whose object was to avoid payment of the debt. (*Puranik, J*)  
CHAND 188 I C 4

AIR

—S 3 (3)—'Livestock'—Cattle

Cattle belonging to the judgment debtor are 'livestock' within the meaning of S 3 (3) of the C P and Berar Act XVI of 1938. The words of a perishable nature in that clause qualify other movable and should not be read along with the word (*Puranik, J*) GADI v TRILOK CHAND 188 I C 432=13 R N 4=A I R 1940

**CENTRAL PROVINCES DEBT CONCILIATION ACT (II OF 1933)—Board's acts—Presumption**

The Board's acts—Presumption

British India when the law of one province is distinct from the law of the other, the two provinces must be regarded for the purposes of the rule as foreign

appointment of guardian—  
of interest—Validity of the

a minor creditor though there was no formal order appointing a guardian yet presented and protected discharging his debt the Board are quite order as to guardian inasmuch as there has inor (*Puranik, J*)

Where after the service of the notice a creditor fails to file his statement within the time allowed and the Court him to revive filing the state practice of the

amounted to a condonation of the delay in the filing of their statements. The order of the Board discharging the debts is quite in order and could not be declared ultra vires. (*Stone C J and Bose, J*) SETH KISHANLAL v ABDUL HALIM 1940 N L J 252

the statements warning of the "re liable to be to an arrange be other debts veiled creditors either improve of the debts the statement

tlement of ed agree perform- ABDUL

Nag B2  
separate than 40

note in Bombay—Maintainability—Jurisdiction—  
Contra 1—Suit—Law applicable.

per cent of total debts value—Certificate if could be issued

## C P DEBT CONCILIATION ACT (1933) S 12

The scheme of S 12 of the Central Provinces Debt Conciliation Act is that efforts should be made to arrive at an amicable settlement and that it shall be put into form and that that form shall be signed by all the parties to the settlement. It was never contemplated that there should be as many agreements as there were creditors. Where originally creditors whose debts amounted to more than 60 per cent of the total debts agreed to the conciliation but subsequently when separate agreements were executed by each creditor one of the major creditors refused to sign the agreement and thereby reduced the amount of debt conciliated to less than 40 per cent of the total debt it was held that the agreements executed were not binding and a certificate under S 15 of the Act could not be issued in such a case (*Stone C J and Bose J*) **GOPIKISAN v ANARCHAND** 1910 N L J 67

—S 12 (1)—*Determining point of time—Discharge of debts—If can be excluded*

The point of time with which S 12 (1) of the Central Provinces Debt Conciliation Act is dealing, is the date of the amicable settlement. The moment that an order of discharge is passed under S 8 (2) in respect of certain debts they cease to be owing and hence they ought to be excluded when the remaining debts are taken up for settlement (*Ruse, J*) **DEOBA v GANESH LAL** 1910 N L J 614

—S 13—*Settlement—Death of debtor and default in instalments—Recovery—Proper procedure*

When a debtor whose debts have been settled in an agreement registered under S 12 (3) of the C P Debt Conciliation Act dies and there is a default in the payment of any amount due under the agreement, the proper course is for the Deputy Commissioner to bring the names of the legal representatives of the deceased debtor on record and to proceed with the recovery of the amount in default in accordance with sub-section (1) of S 13 of the Act. The death of the defaulter does not prevent the recovery of the amount in default (*Burton, F C*) **RATANSINGH v SETH SAMARTHMAL** 1940 N L J 417

—B 13 (1) and Central Provinces Land Alienation Act (II OF 1916) S 16 (2)—*Sale under S 13 (1) of Debt Conciliation Act—If can be held under S 16 (2) of the Land Alienation Act*

Where on the failure of a member of an aboriginal tribe to pay the instalments fixed by the C P Debt Conciliation Board an application for sale under S 13 (1) of the C P Debt Conciliation Act was made it was held that there was nothing to show that it was ever contemplated or intended that the provisions of S 13 of the Act should operate so as to deprive a debtor, being a member of an aboriginal tribe of the protection afforded to his immovable property by the Land Revenue Act, and that hence the land in question was not liable to be put to sale in pursuance of S 13 (1) of the Debt Conciliation Act and S 16 (2) of the C P Land Alienation Act (*Burton, F C*) **DIWAN TIMRANSHAH v BABU ANANTRAM** 1940 N L J 679

—S 15—*Power to issue certificate—When could be exercised—Scope and applicability of sub Sec (2) and (3) of S 15*

S 15 (1) of the C P Debt Conciliation Act gives the Board power to issue a certificate at any time, if the creditor has refused to accept what the Board considers to be a fair offer and it is in no way dependent on the making of an agreement under S 12. Sub-S (2) of S 15 comes into force where such a certificate has been issued and the Court shall not allow the plaintiff any costs in the suit or any interest on the debt after the date

## C P LAND ALIENATION ACT (1916), S 25

of such certificate in excess of simple interest at 6 per cent per annum. Sub-S (3) comes into force only when there is an agreement and in that case it is only the execution of the decree that is stayed but it has nothing to do with interest or costs (*Pollack, J*) **JANKI PRASAD v BALMUKUND** 190 I O 38—13 R N 77—1910 N L J 261—A I R 1910 Nag 268

—Ss 15 and 21—*Execution sale prior to application under Debt Conciliation Act—Confirmation if can be interfered with under Ss 15 and 21* See 1939 Dig. Col 122 **AKHARI ALI v SETH SOBHARAM** I L R (1939) Nag 651—189 I O 118—13 R N 21

—S 15—*Intention of legislature—Civil Court, I can examine the reasons for issue of certificate under S 15* See 1939 Dig Col 123 **JANBAI v MANNOO** 185 I O 888—12 R N 177

—S 18—*Interference by Civil Court*

Though, if the Conciliation Board exceeds its jurisdiction and such action is questioned the Civil Court will enquire into the question of jurisdiction, it will not interfere with the proceedings of the Board if they are within jurisdiction (*Puranik, J*) **JAWARCHAND v TAFIRAM** 1910 N L J 256

—S 21—*Applicability—Passing of foreclosure decree—Effect Execution, if affected by proceedings under Debt Conciliation Act* See 1939 Dig Col 123 **MAHESHAJI v CHANDRA BHAN** 189 I O 178—13 R N 28—A I R 1910 Nag 42

—S 21—*Suspension of proceedings in Civil Court—When takes place* See 1939 Dig Col 124 **MAHE MAJI v CHANDRABHAN** 189 I O 178—13 R N 28—A I R 1910 Nag 42

—S 23—*Applicability—Principal debtor alone applying under the Act—If extends time as against surety*

Where a principal debtor alone has chosen to seek relief under the Debt Conciliation Act, that cannot have the effect of extending the time for filing a suit against the surety, for the debt of the surety was never before the Board and hence S 23 of the Conciliation Act will not extend time as against him (*Pollack, J*) **KESHEORAO v LAXMAN** 186 I C 763—12 R N 253—1939 N L J 604—A I R 1940 Nag 91.

—S 24—*Applicability—Change of lambardar pending execution proceedings*

There is nothing in S 24 or in any other section of the Central Provinces Tenancy Act to warrant the view that if the decree holder named in the order of ejectment is no longer lambardar or landlord, proceedings may not be taken under that section. The order of ejectment is not drawn in the name of the lambardar or landlord as such *ex officio*, hence a change of lambardars cannot affect the right to execute the decree (*Burton, F C*) **LOKMAN TIKWA LODHI v GAWARA BAI** 1940 N L J 523

—S 21 A—*Board's proceedings—Nature of Board if can pass an order under S 195 Cr P. Code* See CR P CODE S 195 AND C P DEBT CONCILIATION ACT, Ss 24 A AND 18 1910 N L J 23

CENTRAL PROVINCES LAND ALIENATION ACT (II OF 1916)—*Scope of—If prohibits only sale and not attachment* See 1938 Dig Col 162 **DEPUTY COMMISSIONER, HOSHANGABAD v FIROZ KHAN** I L R (1940) Nag 261

—S 25—*Object of—Presentation of appeal to High Court by the Deputy Commissioner in person if necessary* See 1938 Dig Col 163 **DEPUTY COMMISSIONER, HOSHANGABAD v FIROZ KHAN** I L R (1940) Nag 261.

—S 25 (2)—*Right to apply under when arises—*

## C. P. LAND REVENUE ACT (1881) S 152

Simple money decree—Attachment—Effect See 1938  
Dig Col 163 DEPUTY COMMISSIONER, HOSHANGA  
BAD v FIROZ KHAN I L R (1940) Nag 261

12 R P 384

—(II OF 1917)—Malguzar—Right to take water  
from jointly owned village tank

The mere fact that a person is a malguzar and that  
the tank is in joint ownership of the proprietary body  
does not give the person the right of using the water for  
irrigating his

(Stone, C J)  
TANYABAPU

—and  
“Land” as

1939 Dg, Col 125 GANGA PRASAD v ITWAR  
SINGH 189 I C 273=13 R N 31

—S 37 and C P Tenancy Act S 24—Powers

Revenue Act, at the time of reversing the order appeal  
against himself to proceed with and carry out the  
order for ejectment under sub-S (2) of S 24 of the C  
P. Tenancy Act There is no provision for the  
late Court to take the case on its own file for  
(Burton, F C) LAXMIKANT WASUDEO

## C P. LAND REVENUE ACT (1917), S 166.

continuous years is recorded in the village land records  
as having been so cultivated for the required period  
(Burton, F C) BALMUKUND v MAHADEO,  
1940 N L J 611.

asra is to contain as

It does not touch  
of home farm lands

AMJI SAHEBLAL v.

1. 26=13 R N. 12=

1940 N L J 519=A I R 1940 Nag 178.

—S 80—Applicability See 1939 Dig Col 126.  
BABA RAMCHANDRA v. KONDOO JAGNA.

A I R 1940 Nag 7.

—S 109—Succession to tenure of protect-  
ed thekadar—Principle governing.

It is laid down in S 109 of the Central Pro-  
vinces Land Revenue Act, that the succession to  
tenure of a protected thekadar shall be regu-  
d by the personal law of the deceased theka-  
subject to certain conditions which to some  
ent modify the personal law applicable to  
Hindus Hence the law applicable is the ordi-  
nary law of Hindu succession as modified in  
minor details and irrespective of any idea of  
jointness which might arise from the  
that the tenure is impartible. (Grille,  
-RHARI v MIST MAHARANI

187 I. C 750=12 R N. 299=

1939 N. L. J. 605=A. I. R. 1940 Nag. 102.

—S. 112—Scope of—Applicability to forfeiture of  
protected status.

Land Revenue Act is  
ected status is to be  
latter case is provided

—Ss 68 and 106—Declaration of khudkasht  
land as fit—If a matter of discretion—Duty of  
Revenue Officer

—S 166—Scope and object of—Imperfect partition,  
if prohibited

ices Land Revenue Act is  
Officer discretion to refuse  
on involving the tenant's  
to the homefarm land,  
to avoid sub division  
time and labour involved  
intention to prohibit  
altogether imperfect partition involving shares of

of 500 are satisfied An attachment by Civil  
Court of the land in question

C P LAND REVENUE ACT (1917), S 169

C P LAND REVENUE ACT (1917), S 220

—S 187—Minor lambardar—Exercise of powers—Procedure

Where a lambardar is a minor, his guardian cannot exercise the powers of a lambardar in relation to the proprietary body. The power of a lambardar to act through a guardian is nowhere recognised in the Central Provinces Land Revenue Act for the exercise of the powers of a guardian is under a disability is through a dardar gumashta (*Grille and Po* MOHAN SINGH v TULSIRAM

A I R 1940 Nag 377

—S 187 (3)—Duties meaning of See C P LAND REVENUE ACT SS 189 183 AND 187 (3)

1940 N L J 199

—S 187 (3)—Interpretation of office

The phrase 'the duties of the S 187 of the Central Provinces' sufficiently wide to cover both imposed and the powers conferred. Were the lambardar confined to the duties imposed anomalous position might arise might refuse to collect rents the lambardar gumashta would collection of the land revenue

—Failure to discharge duties entails removal of lambardar meaning of—Distinction between

mean the whole of the functions which lambardar has to perform whether it be the duty specified in S 188 (1) or the exercise of such of the powers which the lambardar has to undertake under sub S (2) as the gumashta can exercise. The distinction between 'duties' and 'powers' is marked more by the side headings than by the actual contents of the two sub-sections. It follows, that the lambardar is required to perform the function of collecting village profits and rendering an

—S 189—Removal from office of lambardar in—Grounds

The Deputy Commissioner can remove a lambardar, a lambardar, or a lambardar because he ceases to have a proprietary account of his bad character, or gross

The word 'relative' occurring in R 3 of the rules framed under S 196 of the C P. Land Revenue Act for the appointment of village watchman, as interpreted in the explanation, is used in its most general sense to cover any relationship whether traceable through the male or the female side and includes even relations by

R C ) TIKWADYA ANDHARU v 1940 N L J 109

framed under—R 3 (2) proviso given—Expiry of period of 2 operations—Subsequent order re-training clearance—Completion of clearance—Legality

It is true that the proviso to sub-R (2) of R 3 of the rules framed under S 202 of the C. P Land Revenue Act, speaks of clearing operations not being started until

J J ) NILKANTH v VISHWANATH

1940 N L J 480—A I R 1940 Nag 370.

—S 203—"Transfer" if limited to cases of sale—Mortgage of house and site in abadi—Right of re entry, if arises

The term 'transfer' in S 203 of the Central Provinces Land Revenue Act cannot be understood as being limited to a conveyance of all the transferor's interest in the property, but it includes such limited form of

Where the right to occupy abadi on which it is built, a certain number of years by S 203 and a right of the malguzar (*Grille, J*)

matter that Act in the a co sharer consent and a lambardar and Pollock,

## C P TENANCY ACT (1920)

S 46 of the C. P. Tenancy Act has no application to a case where the lands have ceased to be connected with any agricultural holding, and are residential house property and have been treated as non-agricultural and transferable land (*Rowland, J*) *PARMESHWAR PRASAD v. WALJI CHHATRI* 6 Cut L.T. 62

—(I OF 1920)—Construction—Rights under the old Act—How affected

The provisions of the new Act must not be so construed as to take away rights that have accrued under the old Act (*Pollock J*) *PACHO v. NIKHELAL*

190 IC 145=13 BN 81=1940 N.L.J. 377=

A.I.R. 1940 Nag 335

—Interpretation—Notions derived from English and ordinary Indian Law, with reference to landlord and tenant to be excluded

The Central Provinces tenures which are unknown one follows closely the spirit of Act and excludes from

## C P TENANCY ACT (1920), S 13

sons as tenants governed by the Tenancy Act (*Pollock J*) *SAMBHSHIO v. LAXMAN ZINGAJI*

189 IC 512=13 BN 49=1940 N.L.J. 162=

A.I.R. 1940 Nag 210

—S 12—Transfer of undivided share—When permissible

Under S 12 of the C P Tenancy Act an occupancy tenant may transfer any right in his holding to a co-tenant or person who if he survived the tenant with out nearer heirs would inherit his right (*Pollock J*) *ABDUL JABBAR v. MST RAMMA* 188 IC 825=

13 BN 11=1940 N.L.J. 164=

A.I.R. 1940 Nag 160

—S 12 (1)—Acquisition of tenancy by adverse possession by remote heir—Ejectment, if can be resisted

Where a person has acquired the tenancy by adverse

—TO HOLD TO LAND OLD LANDLORD NOT TAKING STEPS TO

12 BN 234=1940 N.L.J. 121=

The charge given in S 9 of the Central Provinces Tenancy Act is a special statutory right (s e) it is a charge created by operation of law The extent to which the ordinary law as to charges is set aside is indicated in S 9 f

implication T precedence for attained the me specified in the further than t subrogation

gagees pay the rent due by the tenant, to save the security, have only to rely on S 92 read with S 100, T. P. Act (*Stone, C J and Bose J*) *SITARAM v. KRISHNARAO* 190 IC 611=1940 N.L.J. 179=

A.I.R. 1940 Nag 156

—S 9—Sale in execution of decree for rent of absolute occupancy holding—If free from

—S 13—Right to apply under—Transferee from party to a transfer contrary to S 12

Where a surrender by a tenant of an occupancy hold same of the lease free come a ve the l only

succeeded to the right, title and interest of his transferor, who had accepted the surrender and so could not question its validity (*Greenfield*) *CHHOTELAL v. HAJI MULLA* 1940 N.L.J. 483

—S 13—Scope of—Surrender obtained by co sharer—Lambardar resorting to remedy under S 13—Equitable relief to co-sharer.

—S 12—Exemption from attachment—Nazul plots cultivated by judgment debtor.

The mere fact that the word 'occup' is used in the Nazul settlement record the occupants a right to claim the liable to attachment in execution of never intended by Government to di

under S 13 in a suit by the co sharer who took the surrender for contribution among other reliefs, it was

C P. TENANCY ACT (1920), S 24.

and Cl  
precedent to taking possession.

According to S 24(2) of the Central Provinces Tenancy Act, the landlord is not entitled to take possession of the fields in execution for arrears of rent, without

CHARGE

the meaning of S 92 of the C P. Tenancy Act, where such a mortgagee in possession is ejected from the holding a suit by him under S 9 of the Specific Relief Act in the (ind, J)

LT 64

188 IC 825-13 BN 11-1940 N L J 161-  
AIR. 1940 Nag. 160

S 24 and Central Provinces Land Revenue Act, S 23-Notice of ejectment- Proper service- Appeal from order of ejectment

Service on a pleader appearing for a party in an

S 94-Scope and object of

S 94 of the C. P. Tenancy Act was inserted apparently in order to enable a landlord to recover possession of his land which he had leased out with other land so that the tenant became the occupancy tenant of the entire holding, in other words, it was inserted in order to avoid the position created by S 69(c) of the old Act

S 49-Land declared his between date of mortgage and suit-Effect-Right to benefit conferred S. 49-If can be claimed in execution-C. P. Code S 74 and O 21, Rr 97 and 98. See 1939 Dig, C 132. GANGA PRASAD v. ITWARSINGH

189 IC 273-13 BN. 31.

AIR. 1940 Nag 335.  
CERTIORARI - Writ of - Jurisdiction of High

is invested affecting the causing that bject to the t of justice C. J., Mya matter of I: R 365- 84(8 B)

S. 89-Compliance-Deed of relinquishment by

Writ of - Rent Settlement Officers - Rangom

possession (Niyogi, J) DAYTU KAMJI v WAMAN RAGHUNATH 187 IC 247-12 BN. 273- 1940 N L J 208-AIR 1940 Nag 247

S 92-Scope-"Tenant"-U agreee from recorded tenant-Ejectme -Suit for restoration of possession Relief Act-Jurisdiction of Civil Court.

A mortgage of a tenancy is not an absolute assignment and does not create privity of estate between the

own execution then it does not put an end to the suit and consequently whether the matter be placed on the of estoppel by record the decree is merely suit qua suit is at an apply and decree qua decree does not operate as notice. (Stone C.J. and Bose, J.) GHASIRAM v. KUNDANBAL. 1940 N L J. 1-A I.R. 1940 Nag.



## CHOTA NAG TENANCY ACT (1908) S 208

under S 208, Chota Nagpur Tenancy Act and does

## C. P. CODE (1908) S 2

ed and is not corrected it is a wrong which continues

*Exemption*

Pradhans are no doubt a sort of tenure holders and come within that class under some provisions of the Act but so far as regards villages in Dhalbhum such as Kalaybore it is an essential feature of the Act that the pradhan is a tenure holder cannot be held exempt from the liability tenure sold in execution of a rent decree. This liability is not affected by S 74 A as that section are addressed to the case pradhan has been evicted by the landlord

Nagpur Tenancy Act does not mean the actual commencement of the misuser and time does not run from the date of the erection of the huts. A period of two years can be calculated from any day during

I.C. 378 Reversed

CHANDRA DEO v D

1940

6 B.R. 876 = A.I.R. 1940 P.O. 137 (P.O.)

S 211—Scope—Transferee of holding—Failure to get recorded in landlord's sherista—Effect on suit under S 211 (2)—If gives right to landlord to treat transferor tenant as representative of transferee

There is nothing in S 211 of the Chota Nagpur Tenancy Act to show that the failure of the transferee of a holding to get himself recorded in the landlord's sherista shall in every case and as a matter of law amount to a representation to the landlord that in any suit which may be brought by him for rent he is to assume that the transferee is represented by the old tenant (transferor). Nor shall such failure defeat the claim

211 (H)

v. CHANDRA DEO v D

12 R.F. 407 = 185 I.C. 671 = 6 B.R. 232 =

A.I.R. 1940 Pat. 482

S 215 (3)—Applications to set aside sale—Order on Appeal

12 R.F. 481 = 6 B.R. 324 = A.I.R. 1940 Pat. 54.

S 233—Construction—Date of misuse or breach complained of—Meaning of—Continuing wrong—Erection of huts on agricultural land—Suit for ejectment—Limitation—Starting point—Suit filed more than two years after erection of huts—If barred—Limitation A.I.R. 23

The

where the latter

run in the case

little doubt that

where the latter

run in the case

little doubt that

and maintenance fee—Calculation of rent or rent of separated portion

registration fee under S 11 (a) Tenure holders' Rent Account Act before the amendment in 1939 it the separated portion Chota Nagpur Tenancy Act evicted on the rent of the act of which a separate

account has been opened. The position however is different as regard S 11 (b) of Act I of 1929, for in the case of the annual maintenance fee it is to be calculated on the rent of the whole tenure. The Amendment Act XIV of 1939 has altered this (Fazl Ali and Meredith, JJ) ISHWAR NATH ROY v. PERTAB UDAI NATH SAHA DEO 19 Pat. 662 = 1940 P.W.N. 881 = A.I.R. 1940 Pat. 658

S 11 (b)—Rent—If means primary rent alone or includes cess

The word "rent" in S 11 of the Chota Nagpur Tenure holders' Rent Account Act of 1929, was intended to include cess and the fee of two per centum is to be rent plus cess. ISHWAR NATH ROY v. PERTAB UDAI NATH SAHA DEO 19 Pat. 662 = A.I.R. 1940 Pat. 658

S 11 (b)—Rent of the tenure—Meaning—Rent of the whole tenure or rent of the separated part

The expression "rent of the tenure" in S 11 (b) of Act I of 1929, before its amendment in 1939, means merely the rent of and Meredith JJ) UDAI NATH SAHA 940 P.W.N. 881 = A.I.R. 1940 Pat. 658

CIVIL COURT—If comprise the Crown. See WORDS AND PHRASES—CIVIL COURT 1940 N.L.J. 638 CIVIL PROCEDURE CODE (V OF 1908) S 2—

d ordering final decree to be drawn up—If to judgment See 1939 D.G. Col. 138 A.V.

## C P CODE (1908), S 2

that it was a benami purchase for the plaintiff natively on the ground that there was a transfer in his favour and the Court on a issue as to the maintainability of the suit by S 66, C.P. Code, decides against the plaintiff to decree. If the Court decides that one

## C P CODE (1908), S 9

the administrator in law and is therefore the meaning of S. 2 (11), an allegation that the

S 2 (2)—Decree—Order under  
Appealability—Ss 47 and 144

An order under O 21, R 93, C P. Code, is not open to appeal. It is not a decree and is not an order falling under S 47 or S 144, C. P. Code (*Broomfield and Dinania, JJ*)

KASHIKAR  
189 I C

accounted for S 53, C. P. Code, does not in any way negative the claim of the son to be a legal representative within S. 2 (11). (*Beaumont, C. J., Wadia and ANNAPPA*) 1066 (F.B.).

Ss 2 (2) and 96—"Decree"—Essentials of—  
"Matters in controversy in the suit"—Meaning of—

specific performance—Death of the holder and devolution of estate on his son—Decree, if executable against

## SHOITAM DAS v DEOKARAN

I L R (1940) Nag. 324

S 2(2) and O 7, R 11—Rejection of appeal as time-barred—If a decree—Appealability  
The rejection of a memorandum of a out of time amounts to a decree and (*Alfredith, J*) GAJADHAR BHAGAT:

S 2 (11)—Legal representative—Member of a joint Hindu family.

There is no doubt that in a joint Hindu family the law of inheritance does not apply to the joint family

S 2 (3) and O 21, R 10—Scope holder" and "holder of a decree"—Mean synonym—Right to execute decree—Decree in name of another—Right of real execute.

There is no provision in the Code of Civil which allows a person to come forward as

1940 I L R (1940) All 100-1001 U. O. 24

1. Code, and who is neither the holder of a decree under O. 21, R 10 - - - - - decree has been transfer tion of law under O entitled to execute the between a decree holder. holder of a decree refers C. J. and Fazl Ali, J WAHIDUDDIN KHAN.

100 I. C. 500 =

12 R. P. 491 = 6 B. E. 357 =

21 Pat. L. T. 146 = A. L. R. 1940 Pat. 472

S 2 (10)—Judgment debtor—Subsequent alienation of part of mortgaged property—Suit on mortgage impleading alienee—Final decree for sale—Alienation—If judgment debtor, See MADRAS RELIEF ACT, S. 23

S 2 (11)—Hindu son—If of father in respect of separate against son for father's separate son as legal representative—If can Effect of

S 6—Scope of—Suits if includes proceedings

whole Code, that is to only all proceedings up includes, proceedings in ring as it does under the ites that it is designed to "C. J. and Bose, J.) 1940 N. L. J. 244

S 9—Civil nature—Dispute as to mode of placing jewel with mark on deity—Suit in respect of—If lies See 1939 Dig., Col 140 AIYANACHARIAR v SADAGOPACHARIAR. 189 I. C. 190 = 13 B. M. 183.

S 9—Jurisdiction conferred by—Provincial Legislature, if can take away

## C P CODE (1908) S 9

not contravene any provision of the constitution Act (*Iqbal Ahmad, Bajpai and Mohammad Ismail, JJ*)

## —S 9—Jurisdiction—Determining factor

It is a well recognised principle of law that the nature and not the merits of the claim determines the question of jurisdiction (*Nijogi J*) SHRINIVAS RAO v SECRETARY OF STATE

1940 N L J 582—A T D 1940 N L J 400  
—S 9—Jurisdiction of  
Mahant from religious duties

—S 9—Revocation of probate—Suit for—Jurisdiction of High Court See LETTERS PATENT (CUTTA) CL 12 I L R (1940) 1

—S 9—Scope—Dispute as to propriety namam or mark on godhead—Jurisdiction See 1939 Dig, Col 141 AIYANACHARIAR v SADA GOPACHARIAR 189 I C 190 = 13 R M 183

—S 9—Scope—Right to office—Test—Right to lead horse on particular festival in temple—If office or mere honour—Suit in respect of—Maintainability See 1939 Dig, Col 141 KAMASWAMI GOUNDAN v LAKSHMANA REDDI I L R (1940) Mad 40 =

—S 9—'Suit of civil nature'—Communal festival in public temple—Suit by members of community in respect of ritual observances—Jurisdiction of Court See 1939 Dig, Col 141 NARAYANA MUDALI v PERIA KALATHI MUDALI 185 I C 239 = 12 R M 534

—S 9—'Suit of civil nature'—Right of worship See 1939 Dig, Col 142 AIYANACHARIAR v SADA GOPACHARIAR 189 I C 190 = 13 R M 183

—S 10—Applicability and scope—'Matter in issue'—Meaning—Suit and appeal concerning same plot of land but in respect of rents of different periods—Stay—If to be granted See 1939 Dig, Col 142 MUNUSWAMI MUDALIAR v RAGHUPATHI A I R 1940 Mad 7

—S 10 and Succession Act (1925) S 295

—Applicability of S 10, C P Code, to proceedings under S 295 of the Succession Act—Applications for probate and caveats filed in different Courts on different dates—Which of the rival suits is 'previously in

both Courts on different dates, and an application was

might have chosen to allow the proceedings to become contentious. It was further held that the only date which could be regarded as the date of institution for the purpose of deciding which of the two rival suits was 'previously instituted' must be the date on which the petition was filed. The principle governing such cases was stated by his Lordship to be that any application which is subsequently converted into a plaint or is to be treated as a plaint and the foundation of a suit must be considered to date back as a plaint to the date on which

## C P CODE (1908), S 11

it was filed as an application (*Yorke J*) In re VIOLET PETERSON 15 Luck. 290 = 12 R O 224 = 185 I C 377 = 1940 O W N 1 = 1940 O A 35 = 1940 A W R (C C) 28 = A I R 1940 Oudh 113  
—S 10—Applicability—Suit by a debtor under of the United Provinces Agriculturists' Relief Subsequent suit by mortgagee on mortgage—Latter suit, if can be stayed

Where a debtor files a suit under S 33 of the United Provinces Agriculturists' Relief Act for accounts in respect of a mortgage, and subsequently the mortgagee files a suit on his mortgage, the latter suit cannot be

the relief in the suit and the 10 C P

Code may apply it is necessary that the Court in d have jurisdiction second suit (*Zia I L A L, DURG A* = 1940 E D 400 = 1940 O L R 551 = 1940 A W R (C C) 407 = 1940 O A 796 = 1940 O W N 802 = A I R 1940 Oudh 440

—S 10—Pendency of suit—Judgment pronounced but decree not drawn up—Suit, if still pending

A suit was referred to arbitration and the arbitrators submitted an award. The Court directed that the award would be made part of the decree. No decree however was drawn up as the necessary stamps were not filed.

Held, that the suit was still pending (*Henderson, J*) GIRISH CHANDRA SEN v BRAJALAL SEN 71 O L J 190

—S 10—Priority of suits—Test—One of the suits filed in forma pauperis

A plaint in a suit in forma pauperis should be deemed to have been filed when the application for leave to sue as a pauper was presented and not when the Court-fee on rejection of the application was paid. Same considerations would apply in deciding the question of priority for purposes of S 10 C P Code as between two suits one of which is filed in forma pauperis (*Zia I L A L and Yorke JJ*) RAISUDDIN v BASTI SUGAR MILLS, LTD 190 I C 108 = 13 R O 113 = 1940 A W R (C C) 360 = 1940 O L R 534 = 1940 O A 750 = 1940 O W N 784 =

—S 10—

BAI

—S 11—Res judicata

Adverse finding  
Applicability  
Cause of action different  
Cause of action same  
Co defendants  
Competent Court  
Compromise decree  
Connected cases  
Decision on question of law  
Decree on award  
Directly and substantially in issue  
Execution proceedings  
Findings  
Heard and finally decided

See also

## C P CODE (1908), S 11

Plea of res judicata  
Prior decision  
Rent suit  
Representative suit  
Same parties  
Scope  
Expl IV,  
Expl VI.

—S 11—*Adverse finding—Decree favourable—If can operate as res judicata*

A judgment against which a party has no right of appeal because the decree was in his favour though some of the findings were against him cannot operate against him as *res judicata*. (*Sathe J M*) 1 HUNNALT NAR

1939 Dig Col 143 CHINNAPPAYAN v NARAYANA PATTAR 187 IC 852=12 R M 761=

AIR 1940 Mad 59=(1940) 1 M L J 143  
—S 11—Applicability—Dispute under Co-operative Societies Act—Second award in respect of same debt—If nullity—Bar of *res judicata* See BIHAR AND ORISSA CO-OPERATIVE SOCIETIES ACT S 48

NARUMAL I L R (1940) Kar 15=186 IC 533= 12 R S 203

—S 11—Cause of action different  
The decision in a prior suit cannot bar the filing of a

suits in which  
respective suits  
arlier  
t cor

*res judicata* because it does not follow that if is ancestral the other must also necessarily facts of each holding have to be examined independently (*Sathe J M*) GANESH SINGH v KAPILDEO SINGH 1940 RD 471=1940 A W R (B R) 249

plaintiffs were not given any relief as they failed to establish their title and therefore the question that arose between the co-defendants was not decided cannot operate as *res judicata* in a subsequent suit (*Right J*) VA TO v MAUNG E BU 190 IC 609=

13 R R 86=AIR 1940 Rang 136  
—S 11—Co-defendants—*Res judicata*—Conditions—*Pro forma* defendant not contesting but supporting plaintiff's claim—Dismissal of suit—Decision—If *res judicata* See 1939 Dig Col 143 APPASAMI

Y. D. 1940-12

## C P CODE (1908), S 11

PILLAI v THAYANMAL 189 IC 215= 13 R M 200=1940 M W N 632

—S 11—Co-defendants—*Res judicata*—Conditions—*Partition suit—Rule in—Defendant claiming share t giving express of necessary for*

*res judicata* as between co-defendants if (1) there has been a conflict of interest between such co-defendants, (2) it was necessary to decide the conflict to give the plaintiff the relief claimed by him and (3) the question between the co-defendants was finally decided But a partition suit differs very materially from an ordinary title suit or a suit for money or

Where the defendant's partition of their be given to them

their shares must be ascertained In such a case there is obviously a conflict of interest between the defendants and between a particular defendant and the plaintiff A defendant who asks for his share is entitled to such relief and when a decree is drawn up he can take steps to enforce such a decree in much the same manner as if he was a plaintiff Where a defendant in a partition suit and pleads what his interest and when an the owner of all the m that is an express

adjudication and operates as *res judicata* in a separate suit although the decision might not be necessary for the purpose of granting relief to the plaintiff (*Harries, C J and Manohar Lal J*) HARIHAR PRASAD SINGH v NARSINGH PRASAD SINGH 19 Pat 669

—S 11—Competent Court—Meaning of See

—S 11—Competent Court—Meaning—Competency of Court—Relevant point of time

The words competent to try such subsequent suit

point of time with reference to which the competency of the Court that decided the earlier suit to try the subsequent suit is to be determined It is however clear that the question of the competency is to be judged either by reference to the date on which the earlier suit was filed or by reference to the date on which the subsequent suit was filed To hold that the competency is to be judged by reference to the date of the institution of the subsequent suit would lead to anomalous and startling results (*Iqbal Ahmad and Verma JJ*) SAF

## C P CODE (1908), S 11

NASIB KHAN v KUTBUNNISA.

1940 A W R (H C) 504=1940 O A 878=

1940 A L J 679

—S 11—Competent Court—Small Cause Court—

—Decision in rent suit that tenancy

P Act—If bars claim in subsequent

previous rent suit declaring that the te  
by the T P Act, as the Small Cause Cou  
diction to try the subsequent title suit (Sen J)

PASHPAT PRATAP SINGH v UDAI BHAN PRATAP  
SINGH. 14 Luck 763

—S 11—Connected cases—Same evidence—Single  
judgment—Separate appeals—Dismissal of one for in  
sufficiency of court fee—If operates as res judicata as

v RAM SAHAI

1940 A W R (B.R.) 125=

1940 O A 777=1940 E D 374=

1940 A L J (Supp) 24,

can be reconsidered in  
action—Relevancy—Li  
tiff to sue alone—If

to sue alone or not is a mixed question of law and fact  
and a decision in respect of it must operate as res  
judicata in a subsequent suit between the same parties,

—S 11—Execution on award—Res judicata—See  
C I CODE SCH II, PARA 20

—S 11—Directly and  
Determination of amount due  
for possession—Subsequent suit  
decision as to amount due if re

## C P CODE (1908), S 11

Where in a prior suit by the mortgagee for possession  
of the mortgaged property, it became necessary to  
decide as to the amount due on the mortgage and the  
sum due was in fact determined, it would operate as

—S 11—Directly and substantially in issue  
of some lands under agreement to  
upon other lands of same owner—  
aquisition proceedings in respect of  
nding that he is tenure holder—If res  
judicata in suit in respect of former lands

Where a person is in possession of certain lands be-  
longing to another under an agreement to lease, and has  
also encroached upon other lands of the same owner and  
is wrongfully in possession of such other lands a finding  
in land acquisition proceedings with regard to the  
latter land that the person in possession is a tenure  
holder cannot operate as res judicata in a suit for  
ejectment with respect to the former lands of which he  
is in possession under the agreement to lease (Harries  
C J and Manohar Lal J) SHIVA PRASAD SINGH  
v MANDIRA KUMARI DEBI 190 IC 581=

13 R P 212=21 Pat.L.T 277=A L R 1940 Pat 438  
—S 11—Execution proceedings—Certain objection  
to execution not raised in first application—Such obje

tion  
then by the principle  
Sen, JJ) K G V  
CHOWDHURY

44 C W N 749

gr—Constructive res

judicata apply in execu-  
yes open undertakes  
and to a certain posi-  
is a substantial  
reprobate it in  
re agitate the

v F HUSSAIN

186 IC 881=

12 R L 436=A I R 1940 Lab 7

—S 11—Execution proceedings—Constructive

if  
tive res judicata is applicable  
to this extent that where a  
use all his objections to the  
application in execution made by the decree holder

be  
and  
in  
ind

## C P CODE (1908), S 11

*Revised, J*) DULA BIBI v PARMANANDA DAS  
188 IC 672-13 RP 17-6 BR 711-  
A.I.R. 1940 Pat 251  
—S 11—Execution proceedings—Construction res

The decision of a Court to confirm an execution sale operates as *res judicata* against a judgment-debtor who

52 L W 416—(1910) 2 M L J 487

—S 11—Execution proceedings—Constructive res judicata—Objection not taken at earlier stage of same

applies to execution the omission of an application for execution but only at an earlier stage of the same execution application makes no difference (*Shemp J*)  
BISHAN SINGH v JAISHI RAM 188 IC 207=  
12 B L 513-42 P L R 189-A.I.R. 1940 Lah 161

—S 11—Execution proceedings—Constructive res judicata—Plea of limitation

42 P L R 374

—S 11—Execution proceedings—Different objection at different stage—If can be raised

In the course of the same execution different objection can be raised thereof (*Din Mohamed J*) C.  
SOCIETY v SUNDAR LAL

12 B L 409-41

—S 11—Execution proceedings—Same subject matter—If necessary See 1939 Dig Col 147 BALDEV SINGH v SHER SINGH 185 IC 609-12 B L 308

—S 11—Execution proceedings—Orders in—When not *res judicata* See 1939 Dig, Col 148 MAUNG MAUNG v V V R CHETTYAR FIRM 1940 Bang L R 82-185 IC 70-12 B R 178

—S 11—Execution proceedings—Order under O 21, R 48—Subsequent application contesting its validity—If barred See 1939 Dig, Col 148 TYN v SAW LU HOKE

—S 11—Execution proceedings—Summary judgment under S 47—If complete

## O P CODE (1908), S 11

DAULAT RAM v ANANT RAM  
187 IC 165-12 B L 444-A.I.R. 1940 Lah 67

—S 11—Execution proceedings—Plea of adjustment—Objection on the ground of ground of execution—See 1939 Dig

DAULAT RAM v ANANT RAM v MT BECHNI DEBI 186 IC 187-12 B P 456=  
6 B R 302-A.I.R. 1940 Pat 56

—S 11—Heard and finally decided—Abandonment of claim by plaintiff See 1939 Dig, Col 149 NAND LAL v LAKHMI 187 IC 865-12 B L 500

—S 11—Heard and finally decided—Connected cases—Appeal in one only—Effect—Suit on mortgage after insolvency of mortgagor—Application by Official Receiver to set aside mortgage—Decree in suit and dismissal of application—Appeal by Official Receiver against dismissal of application alone—If *res judicata*—Provincial Insolvency Act, Ss 4 and 53—Scope

Appellant had a mortgage executed by a person who subsequently became insolvent. The mortgage was

that the Court executing the mortgage decree was bound to give effect under S 4 of the Provincial Insolvency Act to the decision in the insolvency inquiry

a decree of a court which had not been become final the mortgage was given and dismissed the mortgage having been executed more than two years before the date of the insolvency S 53 of the Provincial Insolvency Act did not apply, and the only order that could possibly be passed under the Act to set aside the mortgage must be one under S 4 of the Act (3) that it could not be held that the subject matter of S 4 was one with which the Insolvency Court alone was concerned, and that the existence of insolvency proceedings did not take away the jurisdiction of the ordinary Civil Court, (4) that the District Judge was not competent to decide an

## C P CODE (1908), S 11

186 IC 145=12 R L 367  
 —S 11—Heard and finally decided—Decree for cess under Bengal Cess Act—If final on question of defendant's status—*Res judicata* in subsequent suit for ejectment See **BENGAL CESS ACT S 41(2)**

21 Pat LT 277  
 —S 11—Heard and finally decided—Malabar kanom—Suit for redemption by holder of melcharth—Decree allowed to lapse—Fresh suit by subsequent melcharth holder—Maintainability See **MALABAR LAW—KANOM 51 LW 569**

—S 11—Heard and finally decided—Second suit for redemption—Usufructuary mortgage—Prior suit for redemption—Preliminary decree—Final decree dismissing suit for non payment of commission fee—Second suit—If barred

A final decree of 1919 in a suit for redemption of a usufructuary mortgage which orders the suit to be dismissed owing to non payment by the plaintiff of the fee payable to the commissioner appointed to take accounts is not one which either in terms or by implication extinguish the right of redemption although the preliminary decree does provide that on non payment of the money fixed within the date fixed the right of redemption shall be lost or that the plaintiff shall be debarred

under O 33 R 8 C P Code (*Pandurang Row and Abdur Rahman JJ*)  
**SRIRANGACHARIAR**

—S 11—Heard and Hindu father and sons—passed against father alone—Effect of—son's shares—If can be proceeded against in execution See **HINDU LAW—DEBTS (1940) 1 MLJ 363**

—S 11—Heard and finally decided—Suit dismissed against one of two defendants—Decision not appealed against—Decision if liable to attack on appeal from decree relating to other matters left undecided

A decree holder instituted a suit under O 21 R 63, C P Code, against father and son for a declaration that the son had a saleable interest in A, B and C properties and that all the three properties were liable to attachment. The suit was dismissed as against the son in respect of all the properties and against the father in respect of A and B only.

An appeal from this decree lay to the Code but no such appeal was filed. The suit was not a mitigation prescribed by law and had become final and was not liable to be set aside from the decree relating to other matters which have been left undecided.

## C P CODE (1908), S 11

*v* **UJAGAR SINGH** ILR (1940) Lah 171=186 IC 646=12 R L 435=42 PLR 707=AI E 1940 Lah 1

—S 11 and O 9, R 8—Heard and finally decided—Suit dismissed refusing plaintiff's advocate's prayer for adjournment—Advocate taking no further part in proceedings—*Res judicata*

If an advocate for a plaintiff merely asks for an adjournment on behalf of his client, and on an adjournment being refused takes no further part in the proceedings, the plaintiff cannot be held to have appeared within the meaning of O 9 C P Code, and the dismissal of the suit in such circumstances falls within the purview of O 9 R 8 C P Code, and does not operate as *res judicata* (*Panckridge J*) **HISWA NATH v GOSTO BEHARI 44 CWN 576**

—S 11—Litigating under the same title—Suit on mortgage by assignee under unregistered deed—Dismissal—Fresh suit after obtaining registered deed of assignment—If barred

S 11 must be read as a whole and the words "litigating under the same title" must be read with the words "No Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in the former suit. A purchaser of a mortgaged property brought a suit on the mortgage deed for the mortgage debt. Subsequently, the mortgagee assigned the mortgage to a registered deed. The suit was dismissed on the ground that the matter was substantially in issue in the former suit.

**UDHOVAL**

by *res judicata* **AND ISSARDAS v AIE 1940 Sind 227**  
 proceedings—Proceeding of fact in—*Re judicata* **VEDWAR BANERJEE v IC 98=12 R L 442=AI E 1940 Cal 16**

—S 11—Parties and their representatives—Decision as to legal representative—If *res judicata*

An order that a certain person shall be brought on record as the legal representative of a decree-holder, is not a decree and does not operate as *res judicata* (*Pollock, J*) **SULEMAN v ABDUL SHAKOOR 188 IC 292=12 R N 328=1939 N L J 577=AI R 1940 Nag 99**

—S 11—Plea of *res judicata*—Availability—Reasons for declining jurisdiction—If decision  
 A Court which declines jurisdiction cannot bind the parties by its decision.

It was incompetent to try

C P. CODE (1908), S. 11.

52 L.W. 800=1910 P.W.N. 888=  
A.I.R. 1910 P.C. 222 (P.C.)—S. 11—Plea of *res judicata*—If  
for first time in appeal or second appeal.The plea of *res judicata* can be raised  
time in appeal or even in second appeal.property, the amount so fixed by the decree operates as  
*res judicata* in a subsequent suit for redemption by the  
purchaser of the equity of redemption (*Zia ul Hasan  
and Hamilton, JJ*) SHEO KUMAR v MUNNU  
SINGH. 1910 O.W.N. 604=

1910 O.A. 676=1910 A.W.R. (O.C.) 310.

the  
has

order to give the plaintiff the right of redemption is that the matter must have been in controversy between

DIN MIA v LAKUTENNELA EIBI 1901 C 822=  
71 O.L.J. 232=A.I.R. 1910 Cal 517—S. 11—Representative suit—Representor abandons  
suit—Representee not made a party to the suit—  
Fresh suit by representee, if barred by *res judicata*.

In a representative suit under O. 1, R. 8 C.P. Code,

a Judge who is trying the case and not a decision by one  
of the parties to pursue the matter no further  
(*Roberts, C.J. and Blyden, J.*) THAIVANAI ACHU  
RAMANATHAN CHETTYAR 1910 Rang L.R. 643—S. 11—Same parties—Litigating under the same  
title—Prior suit for redemption of mortgage on basis of  
purchase from nearest reversioners of mortgagor—Find

C P. CODE (1908), S. 11.

nearest reversioner before second suit—If litigating  
under the same title—*Res judicata*—S. 11, C.P. Code72 O.L.J. 99.  
—S. 11—Scope—Insolvency proceeding—Finding  
that certain person is not partner of insolvent firm—If  
*res judicata* against all creditors—Official Assignee—If  
represents creditors for all purposes

There can be no doubt that S. 11, C.P. Code, is not

1901 C 822=1901 C 113=A.I.R. 1910 Cal 225

—S. 11—Scope—Issue in proceeding decided by  
final order—Power of succeeding judge to reopen issue  
in same proceeding at later stageS. 11 is not exhaustive of the principle of *res judicata*.  
When an issue in a proceeding has been made the sub-  
ject of a final order by a Court that and cannot be—Dismissal on ground that plaintiff was only benami  
dar and that transaction was only a mortgage and not  
sale—Subsequent suit by benamidar and real owner to  
enforce mortgage—*Res judicata*—Same parties.A brought a suit for declaration that he was owner of  
certain immovable properties covered by a sale deed  
and that he was in possession as owner, and also prayed  
that, if he should be found to be a benami, he should  
be dismissed onbinding  
assignee  
in insol  
vent  
and  
UNJAB



## C. P. CODE (1908), S. 11.

mortgage. Subsequently *A*, along with *B*, *C* and *D* brought a suit to enforce the mortgage as mortgagees. The defendants raised the plea that the decision in the prior suit operated as *res judicata*.

*Held*, (1) that though the right sought to be enforced in both the suits was based on the same document, the nature of the two suits was entirely different and the two suits were based on two different titles and constituted entirely different causes of action, and it was not obligatory on the part of the plaintiff in the prior suit to join the two causes of action, though it was permissible, (2) that S. 11, C. P. Code, did not apply and the plea of bar of *res judicata* must therefore fail (*Kanra and Vassopolew, Jf.*) GURUSANGAPPA BASAPPA v. BASLINGAPPA BASAPPA

42 Bom L.R. 470—A.I.R. 1940 Bom 311

—S. 11, Expl. IV—Applicability—Title of transferee from Hindu widow admitted by lambardar in suit for profits—Subsequent suit by lambardar as reversioner of estate, against transferee, for possession, if barred.

Where the transferee from a Hindu widow admitted by lambardar (who happened to be heir to the husband of the transferee) the lambardar admits the claim, Expl. IV to S. 11 C. P. Code operate as *res judicata* in a subsequent suit for possession against the transferee by the lambardar after the death of the widow as the reversioner to the estate, for it was open to him to have questioned the transferee's title in the profits suit itself (*Niyogi, J.*) BALARAM JAIRAM PATIL v. KEWALRAM. 1940 N.L.J. 499—A.I.R. 1940 Nag 396

## C. P. CODE (1908), S. 13.

—S. 11, Expl. IV—Might and ought—Mortgage suit—Defendant claiming title paramount—If bound to set it up. See C. P. CODE, O. 34, R. 1.

A.I.R. 1940 Sind 103.

—S. 11, Expl. IV—Might and ought—Title suit for possession dismissed—Subsequent suit for redemption of mortgage—If barred. See C. P. CODE, O. 2, R. 2 AND S. 11, EXPL. IV I.L.R. (1940) 1 Cal 514.

—S. 11, Expl. IV—Mortgage suit—Defendant

—S. 11, Expl. IV—Rent suit—Denial of relationship—Prior rent decrees between same parties—*Res judicata*. See 1938 Dig, Col 207. SHEORAM v. MULCHAND I.L.R. (1940) Nag 181.

—S. 11, Expl. VI—Joint Hindu family—Interests of member represented by manager of his branch—Decision in suit if binding on that member.

Where the interests of a member of joint Hindu family in respect of the matter in dispute are established.

A.I.R. 1940 Lah. 120

—S. 11, Expl. VI—Reversioner—Decree obtained by, in declaratory suit—His status as next heir—If *res judicata*.

A person who succeeds in obtaining a declaratory decree that an alienation made by the widow of the last male holder will not affect his reversionary rights, need not necessarily be the next person entitled to succeed to

CONCLUSION ACT, and the decree-holder later on objects on the ground that the judgment-debtor is not a 'debtor' within the meaning of the Act. Such a plea is not barred by the principle of constructive *res judicata*.

If plea firm infer that barred, m C.J. and

—S. 11, Expl. IV—Alternative plea—Alternative plea raised.

The question whether an alternative plea ought to have been made a ground of attack depends on the facts of each case. If the main plea is raised in the prior suit, it may be said that the raised in the prior suit.

—S. 13—Scope—Suit on foreign judgment—Nature of relief.

Pet Chatterji, J.—S. 13, C. P. Code, simply says that the evidence must be such as to establish the sole foundation of the judgment. But the evidence must be such as to establish the sole foundation of the judgment. (Chatterji and

187 I.C. 57—12 E.B. 404

—S. 13 (a) (b) and (d)—Foreign judgment—Against subsequent enquiry formation jurisdiction British

who were carrying on business in India) brought a suit for breach of a contract entered into by a resident in British India. On

U. S. CODE (1908), § 20

12 A.B. 401  
 S 13(b)—Ex parte decrees—*If not on merits*  
 An *ex parte* decision may or may not be on the merits  
 The mere fact of its being *ex parte* will not justify a  
 finding that the decision was not on the merits. The  
 finding must be based on the merits formally passed, as a  
 matter of fact, or whether it was based on the merits of  
 truth or otherwise of the merits and *Meridith* *ff* )  
 190 I O 545 =  
 7-1940 P.W.N 758  
 c—*Meaning of*,  
 does not mean British

2. ~~11 - advantage conferred by~~ When can be

100 1 U 400-13 E A 25-1940 A L J 110-  
1940 A W E (H C) 109-A I E 1910 A L 201-  
—S 17—Applicability—Application under Para  
20 (2) Sch II—Jurisdiction—Property situate within  
the jurisdiction of several Courts—Jurisdiction to enter  
an and deal with application  
The intention of Para 20 (2) of Sch II, C P Code,  
is that applications coming thereunder should in every  
way be treated as suits and the procedure applying to  
suits should apply to them S 17 of the Code is one of

depositor for repayment—Forum See BANKER AND  
CUSTOMER. 1940 A W B (H C ) 72.  
for amount due—  
its office at Lahore  
Meerut as the chief  
clerk and

## C P CODE (1908) S 11

mortgage Subsequently A, along with B, C and D brought a suit to enforce the mortgage as mortgagees. The defendants raised the plea that the decision in the prior suit operated as *res judicata*.

*Held*, (1) that though the right sought to be enforced in both the suits was based on the same document, the nature of the two suits was entirely different and the two suits were based on two different titles and constituted entirely different causes of action, and it was not obligatory on the part of the plaintiff in the present suit to join the two causes of action though it was possible (2) that S 11 C P Code did not apply the plea of bar of *res judicata* must then

(Kania and Vassopito, JJ) GURUSANGAPPA BASAPPA v BASLINGAPPA BASAPPA

42 Bom LR 470—A I R 1940 Bom 311

—S 11, Expl IV—Applicability—Title of transferee from Hindu widow admitted by lambardar in suit for profits—Subsequent suit by lambardar as reversioner of estate, against transferee, for possession if barred

Where the transferee from a Hindu lambardar (who happened to be also heir to the husband of the transferor), the lambardar admits the claim it was Expl IV to S 11 C P Code operate as *res judicata* in a subsequent suit for possession against the transferee by the lambardar after the death of the widow as the reversioner to the estate, for it was open to him to have questioned the transferee's title in the profits suit itself (Niyogi J) BALARAM JAIRAM PATIL v KEWAL RAM 1940 N L J 499—A I R 1940 Nag 396

—S 11, Expl IV and C P Debt Conciliation

Conciliation Act and the decree holder later on objects on the ground that the judgment debtor is not a debtor within the meaning of the Act. Such a plea is not barred by the principle of constructive *res judicata* unless it is clear that in fact the failed to raise was made plea as constant plea firmly by

—S 11, Expl IV—Right  
the plea is consistent with main  
raised

The question whether an alter

## C P CODE (1908) S 13

—S 11, Expl IV—Might and ought—Mortgage suit—Defendant claiming title paramount—If bound to set it up. See C P CODE, O 34, R 1

A I R 1940 Sind 103

—S 11, Expl IV—Might and ought—Title suit for possession dismissed—Subsequent suit for redemption of mortgage—If barred See C P CODE, O 2 R 2 AND S 11, EXPL IV I L R (1940) 1 Cal 514

—S 11 Expl IV—Mortgage suit—Defendant

—S 11, Expl IV—Rent suit—Denial of relationship—Prior rent decrees between same parties—*Res judicata* See 1938 Dig Col 207 SHEORAM v MUL CHAND I L R (1940) Nag 181

—S 11, Expl VI—Joint Hindu family—Interests of member represented by manager of his branch—Decision in suit if binding on that member

Where the interests of a member of joint Hindu family

A I R 1940 Lah 120

—S 11 Expl VI—Reversioner—Decree obtained by in declaratory suit—His status as next heir—If *res judicata*

A person who succeeds in obtaining a declaratory decree that an alienation made by the widow of the last male holder will not affect his reversionary rights, need not necessarily be the next person entitled to succeed to the property after the death of the widow, and the

—S 13—Scope—Suit on foreign judgment—Nature of relief

Per Chatterji J—S 13 C P Code simply says that

argument—  
against  
subsequent  
inquiry  
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## C. P. CODE (1908), S. 13.

10-3-1934, they obtained an *ex parte* decree in Chandernagar for Rs. 800 and odd against the defendant. On 26-5-1934, in accordance with the procedure of the Code, the defendant was served with a copy of the decree.

question whether process had been properly served. On 27-7-1935 the court found that there was no fraud and that the defendant had appeared before the French Court.

that the cause of action had arisen on 23-3-1935, the date on which the judgment was passed in the "opposition" proceedings.

was found that there was no fraud and that the defendant had appeared before the French Court.

*Held*, (1) that *prima facie* it might be presumed that the judgment of a French Court in an *ex parte* case would be based upon a consideration of the truth of the claim, because that was what the French Code of Civil Procedure prescribed by Art. 434, and since before judgment the plaintiff's pleader was heard and the letters of the defendant forming the basis of the contract were considered, the *ex parte* judgment was clearly one on the merits, (2) that the judgment was later in the "opposition" application of which was wider in scope than that of the application in British India and in which himself raised the issue of merits, was on the merits, (3) that though the defendant was in Chandernagar and had not in any way appeared before the French Court at the time of the *ex parte* judgment, the court was bound to hold that the judgment was on the merits.

voluntary submission to jurisdiction by the defendant before it was passed. Since the defendant himself in the "opposition" proceedings.

## C. P. CODE (1908), S. 20.

natural justice. *WAZIR SAHU v. MUNSHI DAS*. 190 IC 486 = 13 R.A. 25 = 1940 A.L.J. 110 = 1940 A.W.R. (H.C.) 109 = A.I.R. 1940 All. 205.

12 R.B. 404  
13 (b)—*Ex parte decree*—If not on merits, an *ex parte* decision may or may not be on the merits, the fact of its being *ex parte* will not justify a finding that the decision was not on the merits. The court has to consider whether it was formally passed, as a decree, or whether it was a truth or otherwise of the matter. *and Meredith, J.J.*  
190 IC 545 = 7 R.B. 37 = 1940 P.W.N. 758.

H. 13 (d)—*Natural justice*—Meaning of. "Natural justice" in S. 13 (d) does not mean British natural justice.

proceedings are opposed to natural justice (*Chatterji and Meredith, J.J.*) *WAZIR SAHU v. MUNSHI DAS*. 190 IC 486 = 7 R.B. 37 = 1940 P.W.N. 758.

S. 15—"Court of the lowest grade"—Meaning of. If includes village Court governed by special Act. See LIMITATION ACT, S. 4 (1940) 1 M.L.J. 220.

S. 17—*Advantage conferred by*—When can be availed of.

Where a plaintiff has two or more causes of action in the same Court.

188 IC 486 = 13 R.A. 25 = 1940 A.L.J. 110 = 1940 A.W.R. (H.C.) 109 = A.I.R. 1940 All. 205.

S. 17—*Applicability*—Application under Para 20 (2), Sch. II—*Jurisdiction*—Property situate within the jurisdiction of several Courts—*Jurisdiction to enter a decree and deal with application*.

The intention of Para. 20 (2) of Sch. II, C.P. Code, is to confer jurisdiction on the Court of the lowest grade.

## C P CODE (1908), S. 20.

appointment was made at Lahore and all the payments were to be made at Lahore and all accounts were to be rendered at Lahore. Subsequently disputes arose between the parties and the appointment was cancelled. The Company instituted suit at Lahore against the agent for recovery of certain sum due by the agent.

*Held*, that cause of action arose at Lahore and the Court at Lahore had jurisdiction to try the latter suit (*Din Mahomed, J.*) LAKSHMI INSURANCE CO., LTD v B K. KAULA AIR 1940 Lah. 85

—S. 20—*Suit against resident of Indian State—Decree, if effective in that State.*

An Indian State, like the Bhopal State, whose Legis-

## C. P. CODE (1908), S. 22.

*obtained at one place—Suit to set aside in another place—Jurisdiction of Court at latter place—Proper forum.*

Plaintiffs who resided and carried on business within the jurisdiction of the Subordinate Judge's Court, at S executed a mortgage in favour of the defendants who were residing and carrying on business in Bombay the properties mortgaged being situate in S. The defendants sued on the mortgage in the High Court of Bombay and got an *ex parte* preliminary decree. Thereafter, they caused a notice to be sent through their attorney to the plaintiffs, by which the plaintiffs were informed that the Bombay High Court would be moved for

and was  
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*Held*, (1) that the receipt of the notice by the plaintiffs on 15-3-1939 was no part of the cause of action for the suit at all, and could not possibly change the venue of trial to S; (2) that the cause of action set up

Court either personally or through a properly constituted

—S. 20—*Suit for accounts against commission agent—Place of suing*

The general rule is that a suit for accounts against a

where the plaintiffs cause of action arose being Bombay. (*Rowland and Chatterjee, JJ*) SAMPAT LALL v KALURAM BRIJMOHAN 190 I C 152 = 13 R P. 181 = 6 B R 916 = 21 Pat. L. T. 259 = AIR 1940 Pat 441.

—S. 20 (c)—*Cause of action—Suit to set aside decree having been fraudulently obtained after death of illegitimate, fraudulent and a nullity—Decree*

—Ss. 22 and 23—*Scope of—Power of High Court to transfer case pending in a Court subordinate to it, to a Subordinate Court of another High Court*

## C P CODE (1908), S 22

Ss 22 and 23 C P Code are concerned with a case where a plaintiff has the choice of two or more Courts in which he may properly institute a suit. In cases to which Ss 22 and 23 apply the power to transfer is conferred by S 22 and the forum to which the necessary application has to be made is provided by S 23. The High Court has jurisdiction to transfer a suit pending in a Court subordinate to it to a Court subordinate to another High Court (*Stone, C J and Bose J*) KANHAVALAL DAGA v ZUMBERLAL 190 IC 439 = 1910 N L J 231 = A I R 1910 Nag 145

—Ss 22 to 24—Transfer of suit—Considerations—Balance of convenience

In cases of transfer the convenience of parties is indeed a factor which enters into consideration, but the convenience of both parties have to be weighed and the decision would ultimately turn on the balance of convenience. A plaintiff is the *dominus litis* and he has a right to institute the suit at a place of his choice. Where a defendant wants a transfer it must be seen whether the considerations of convenience are so overwhelming on the side of the defendant as to override the claims of right (*Stone C J and Bose J*) KANHAVALAL DAGA v ZUMBERLAL 190 IC 439 = 1910 N L J 231 = A I R 1910 Nag 145

—S 23—Applicability—Plea of want of jurisdiction taken in one Court—Transfer if can be ordered

S 23 C P Code postulates that the several Courts concerned shall both have jurisdiction. Where a plea of want of jurisdiction is taken by one of the parties in one Court, an application by that party under S 23 (3) cannot succeed (*Collette and Bapat J*) BABU LAL GIRDHARI LAL v KOTUMAL 1910 A W R (H U) 503 = 1910 O A 877 = 1910 A L J 611

—S 24—Power of Chamber Judge—Transfer of proceeding under S 317 Succession Act *See* 1939 Dig., Col 155 GULATI v REEVES BROWN 186 IC 39 = 12 R L 337

—S 24—Powers of transfer—Suit filed in Court lacking pecuniary jurisdiction

Under S 24 C P Code, a transfer cannot be made from one Court to another unless the suit has in the first instance been brought in a Court having jurisdiction. There is no reason to make a distinction between lack of inherent jurisdiction and lack of pecuniary or territorial or any other kind of jurisdiction in that Court (*Thomas C J and Zia ul Hasan J*) KANHAVALAL DAGA v HAMIDALI 185 IC 467 = 13 R O 213 = 1910 O A 408 = 1910 O W N 462 = 1910 A W R (O O) 207 = 1910 O L R 16 = A I R 1910 Oudh 181

—S 24—Scope—Suits pending in Madras Court of Small Causes—Application to High Court for transfer to City Civil Court for trial along with suit pending in latter Court—Competency—Madras City Civil Court A C 3 and 5 *See* 1939 Dig., Col 155. ABDUL K. MUHAMMAD ALIYAPPA CHETTI 188 IC 680 =

188 IC 680 =

dition.

High Court to transfer

R 10—A citizen

A suit for a declaration and injunction valued at Rs 205 was filed in the 1st Class Sub-Judge's Court. It was allocated by him to the Joint 1st Class Sub-Judge under the rules for distribution of work. Subsequently by District Judge the case was sent to the

D. 1940—13

## C P CODE (1908), S 35

Court of the Extra Joint Second Class Sub-Judge, attached to the 1st Class Court. By an amendment of the plaint certain property were newly included in the plaint, as a result of which the suit became one beyond his pecuniary jurisdiction. He therefore sent the case back to the 1st Class Court and reported the matter to the District Judge who sanctioned the procedure. When the case was taken up the defendant pleaded that the 1st Class Sub-Judge had no jurisdiction and that the only legal way for the Second Class Sub-Judge was to return the plaint for presentation to the 1st Class Judge under O 7 R 10 C P Code. The 1st Class Sub-Judge made a reference to the High Court under O 46 R 1.

*Held* (1) that the reference was incompetent and O 46, R 1 did not apply as the 1st Class Sub-Judge in whose Court the suit was filed had jurisdiction to try it and could not refuse to try it and his decision being subject to appeal no reference lay. (2) that the case was one in which the High Court could properly take action *suo moto* under S 24 C P Code, in order to save difficulty and delay and transfer the suit to the 1st Class Sub-Judge for disposal. (3) that the case was properly filed in the Court of the 1st Class Sub-Judge (4) that O 7, R 10 C P Code, had no application to the case as the suit had not been filed in a wrong Court without jurisdiction. The amendment of the plaint did not make it a new suit and no re-institution of the suit was necessary (*Broomfield and Divasio J*) BASU BHAI VAMAL CHAND v HIRALAL VAMAL CHAND 42 Bom L R 1098

—S 24—Transfer by High Court of mortgage suit or execution—Transfer to Court, if should have territorial jurisdiction

It is not necessary that a Court to which a suit is transferred in the proper sense of the word (*ie*, transferred by the High Court under S 24 of the Code) should have concurrent territorial jurisdiction and the High Court may transfer a suit to a Court which has pecuniary jurisdiction though it may not have territorial jurisdiction to try the suit. Hence where mortgage suit or execution proceeding is transferred under S 24 by the High Court to a Court which has otherwise no territorial jurisdiction, the Court can order sale of the property lying outside its local limits (*Mysa Bu and Mosely J*) U MAUNG MAUNG v UNYO 189 IC 166 = 13 R R 21 = A I R 1910 Rang 133

—S 34—Decree for payment of money—Meaning of—Interest on damages—Award of—Discretion of Court

The word "money" in the section should not be understood in the limited sense of an ascertained sum of money. The expression decree for payment of money is very general and must be construed as including a claim to unliquidated damages and cannot be restricted in its operation to a claim to liquidated damages. The section leaves the question of granting or refusing interest and damages to the discretion of the Court (*Blackburn and Wainwood J*) BHAGWANT GENUJI v GANGABISAN RAMGOPAL 42 Bom L R 750 = A I R 1910 Bom 369

—S 34 (2) and 152—Scope and effect of—alibi or omission—Decree in accordance with—Omission to award further interest—Power of Court *See* 1939 Dig., Col 156. NANAVALI AMMAL v VENUGOPALA PILLAI 10 IC 468 = 12 R M 614 = A I R 1910 Mad 29

—S 35—Costs—D of money of witnesses summoned but not examined—If can be awarded

Where a party had actually paid it money to the witnesses on certain occasions when the Court could not examine them there is no justification for disallowing

## C P. CODE (1908), S 35

costs incurred in that manner, especially when the

S. 35—Costs—Execution for—Advocate of party entitled to—If can apply personally

Parties are the recipients of costs and not their pleaders. The duty of an advocate is to file an execution application on behalf of his client. Though he has to sign it in the course of his duties, it is only on behalf of his client. The execution must be in the name of the person to whom costs have been awarded (i.e.) the client. (*Davies*) CHOUTH MAL BROS v. RAM CHANDRA AIRUN 1940 A M L J. 18.

S 35—Discretion—Suit by vendor for specific

perform vendor SPECI

in app 156

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—Power of Court to award fees to arbitrator See C P. CODE, SCH II, PARA 13 I L R (1940) Kar 34.

S. 35—Scope—If limited or restricted by S 27 (1), Land Acquisition Act. See LAND ACQUISITION ACT, S. 27 (1) (1940) 2 M L J. 753

S. 35—Suit by executors on legal advice—

Absence of malice—Executor costs personally. See 1939 B, K. RAI.

S 38 and O 21.

tion and the copy of the decree with a certificate of

## C P. CODE (1908), S 47

Subordinate Court to another—Procedure. See 1939

NINGAPPA v. ADIVFPPA 186 IC 372=12 R B 321  
—Transferee Court—Pecuniary must be same as transferor

Court

The transferee Court contemplated by S. 39, C P. Code, must be a Court of competent jurisdiction, that is, a Court which has the same pecuniary jurisdiction as the transferee Court. (*Nasim Ali and Rau, JJ.*) GANESHDAS BADRINARAIN v. AMULUK CHAND OSWAL.

187 I.C. 895=12 R.C. 628=70 C.L.J. 438=A.I.R. 1940 Cal. 161

S 39 (1)—Transfer of decree—Competency of transferee Court—Test—Amount of the decree or

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the suit has

any real bearing on the question of execution of a decree. It is the value of the decretal amount which determines the importance of the case for the limits of pecuniary jurisdiction (*Radha Krishna, J.*) SHANTI LAL v. JAININI KUNWAR. I L R (1940) All 318=

189 I.C. 376=13 R A 87=

1940 A W B (1940) 1940 A T T 227=

I L R (1939) Lah 551.

S 42—Small cause decrees transferred to Sub-

Judge with small cause powers—Application filed for

execution against immovable property—Sub Judge, if

ABINASH CHANDRA 44 C.W.N. 587.

Postponement

—Appalability—

Act X of 1937—

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## C P CODE (1908) S 47

PRASAD I.L.R. (1940) All 517-189 IC 548-  
13 B.A. 143-1940 O.L.R. 503-  
1940 A.W.R. (H.C.) 357-1940 A.L.J. 377-  
A.I.R. 1940 All 328 (F.B.)

—S 47—Appealability of order—Test—Order confirming sale—Appeal it lies See LHOPEL C P CODE S 54 190 IC 174

—S 47—Appeal—Application for transfer of decree—Order on object on opposing transfer See 1939 Dig Col 159 MANMATHA PAL CHOUDHURY v SARADA PRASAD NATH 187 IC 67-12 B.O. 539

—S 47—Appeal—Application under S 20 Madras Agriculturists Relief Act—Order on—Appealability—Question arising—If one between parties See 1939 D.C. Col 159 SWAMINATHA ODAYAR v SRINIVASA IYER 186 IC 424-12 E.M. 629

—S 47—Appeal—Appointment of Commissioners to take accounts in execution—Order giving directions to Commissioners as to taking of accounts—Appealability See 1939 Dig Col 160 PRABHAKAR DEBI v MRS LILA SINGH 185 IC 852-6 B.E. 267-12 R.P. 428-A.I.R. 1940 Pat 75

—S 47—Appeal—Decree—Execution for sum less than that mentioned in decree after reduction under S 15 Bihar Act (IX of 1938)—Appeal—It lies See 1939 Dig Col 160 RAZAUR RAHMAN v UDDI SINGH 185 IC 135-12 R.P. 303

—S 47 and Sch II, para 21 (2)—Appeal—Decree under Sch II para 21 (2)—Question relating to its execution—Appeal if lies from decision

When a decree passed under Sch II para 21 (2) C.P. Code is executed if any question relating to its execution discharge or satisfaction is raised by any of the parties to the decree the determination of such a question is a decree within the meaning of the Code and an appeal is therefore competent from the order deciding the question (*Nasim Ali and Rau J.*) BRINDABAN CHANDRA v KIRAN BALA DEVI 44 C.W.N. 231

—S 47—Appeal—Mortgage bond—Provision for payment—Default clause giving mortgagee right to sue in case two consecutive payments are not made—Suit for

SUBBALA 1939 M.W.N. 111

—S 47—Appeal—Necessary purchaser See 1939 Dig Col 160 AZHAR HUSSAIN v MAHOMED SHIBLI 187 IC 791-12 E.N. 309

—S 47—Appeal—Order for repayment of purchase money to auction purchaser under (I 21, R 93 on sale being set aside)—Appealability See 1939 Dig Col 161 RAMASWAMI CHETTIAR v MAYAPPAN SERVAI 186 IC 187-12 E.M. 810

—S 47—Appeal—Order of rateable distribution under S 73—Appealability See 1939 Dig Col 161 NINGAPPA v ADIVIPPA 186 IC 372-12 E.B. 324

—S 47—Appeal—Order refusing stay of execution—Refusal if competent

An order staying or refusing to stay execution of a decree upon the ground that execution is or is not barred by some special law is subject to appeal as a decree. An application in revision filed against an order refusing to stay execution is, therefore, misconceived (*Egley J.*) ABINASH CHANDRA v BISHNUTRI BHUSAN 41 C.W.N. 587

—S 47—Appeal—Order settling terms of sale proclamation—Appeal—Decision on rights and liabilities of parties with regard to execution—Res judicata—Objection to appeal—If can be objected to at later stage

## C P CODE (1908) S 47

See 1939 Dig, Col 162 NAMASIVAYA MUDALIAR v SRINIVASA IYENGAR 189 IC 732-13 E.M. 312-A.I.R. 1940 Mad. 54

—S 47—Appeal—Order staying or refusing to stay execution under Bengal Agricultural Debtors' Act

The question whether the execution of a decree is or is not barred whether temporarily or permanently, by reason of some special law as (e.g.) by the Bengal Agricultural Debtors' Act—is a question within S 47, C.P. Code and its determination is accordingly a decree within the meaning of S 2 (2) of that Code. It follows that an order staying or refusing to stay execution upon the ground that the execution is or is not barred by the special law in question is subject to appeal as a decree (*Nasim Ali and Rau J.*) NAFAR CHANDRA SARDAR v KALIPADA DAS I.L.R. (1940) 1 Cal 295-188 IC 483-13 R.O. 1-44 C.W.N. 364-A.I.R. 1940 Cal. 257

—S 47—Appeal—Order under O 21, R 15 refusing execution

No appeal lies from an order under O 21 R 15, C.P. Code relating to allow execution in favour of one of the decree holders made for the protection of the interest of the other joint decree holders (*Almond J.*) ABDUL RAHMAN v GHULAM ALI 189 IC 603-13 R. Pesh 12-A.I.R. 1940 Pesh 21

—S 47—Appeal—Order under O 21, R 16, See 1939 Dig Col 163 MAUNG KHIN MAUNG v KARUPPAYA PILLAI 186 IC 522-12 E.B. 261

—S 47—Appeal—Order under O 21, R 66—Appeal—Decision as to—Whether sale is to be held by Court or Collector—If judicial order or administrative act See 1939 Dig Col 163 MAHADEO SUNDER MEHTA v KHANDERAO SITARAM 186 IC 61-12 E.B. 290

—S 47—Appeal—Order under O 21, R 93—Appealability See C.P. CODE, S 2 (2) 42 Bom.L.R. 307.

—S 47—Appeal—Order under S 11, Bihar Money Lenders Act. See BIHAR MONEY LENDERS ACT S 11 1910 P.W.N. 492

—S 47—Applicability—Mortgage decree—Applicability to sale—Death of mortgagor—Objection by legal representative that property belonged to him—Objection within S 47—Proper remedy

mortgagee after the passing of the final decree for sale. During the pendency of the application the mortgagor died. His legal representative who was then brought on record raised an objection to the sale on the ground that the mortgaged property belonged solely to him and that the mortgagor had no right, title or interest therein.

Held that the objection did not fall within the scope of S 47. The objection being to the validity of the decree itself the proper remedy was by way of separate suit (*Dunkley J.*) RAMASWAMY v UTHAYATHA 1940 R.A.J. 11

190 IC 31-13 E.B. 61-A.I.R. 1940 Pat 75

—S 47—Applicability—Mortgage decree—Application by legal representative of judgment debtor to set aside independent title See 1939 Dig Col 161 BANK, LTD., LAHORE v MT. KISHAN LAL I.L.R. (1939) Lah. 493-186 L.L. 11

—S 47—Applicability—Order—Application by auctioneer to set aside—Application by auctioneer for improvements See 1939 Dig Col 161 AND 47

—S 47—Applicability—Order—Application by auctioneer to set aside—Application for improvements See 1939 Dig Col 161 AND 47



## C P CODE (1908) S 35

costs incurred in that manner, especially when the

—S 35—Costs—Execution for—Advocate of party entitled to—If can apply personally

Parties are the recipients of costs and not their pleaders. The duty of an advocate is to file an execution

CHANDRA AIRUN

1940 A M L J 18

—S 35—Discretion—Suit by vendor for specific performance—Costs

—S 35—F

SPECIFIC RELI

in appeal—Proper order as to costs. See 1939 Dig, Col 156

—S 35—Suit by executors on legal advice—Absence of malice—Executors if can be asked to pay costs personally. See 1939 Dig, Col 156 CHOUDEA v.

1939 Dig, Col 156

Small Cause Court—Jurisdiction of latter Court to

be transferred for.

The Court executing it competent to entertain it competent jurisdiction. Jurisdiction pecuniarily

## C P CODE (1908), S 47

Subordinate Court to another—Procedure. See 1939

NINGAPPA v ADIVIPPA

186 I C 372=12 R B 321

39—Transferee Court—Pecuniary

If must be same as transferor

Court

The transferee Court contemplated by S 39, C P Code, must be a Court of competent jurisdiction, that is, a Court which has the same pecuniary jurisdiction as the transferee Court.

Ali and Rau, JJ) GANESHDAS BADRI-

v AMULUK CHAND OSWAL

187 I C 895=12 R C 628=

C L J 438=A I R 1940 Cal 161

—S 39(1)—Transfer of decree—Competency of transferee Court—Test—Amount of the decree or

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189 I C 376=13 R A 87=

1940 A W R (H O) 292=1940 A L J 381=

A I R 1940 All 331,

Competent jurisdiction—Meaning 158 RADHAKRISHNAN RUP LAL, AMRITSAR.

I L R (1939) Lah 651.

cause decree transferred to Sub-

ise powers—Application filed for

movable property—Sub Judge if

original jurisdiction

S 42, C P. Code (Edgley, J) ABINASH CHANDRA

44 C W N 587

Temporary Postponement

S 3—Appellability—

I. P Act X of 1937—

Exercise of, See If appealable

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## C P CODE (1908) S 47

PRASAD I L R (1940) All 517-189 I C 848-  
13 B A 143-1940 O L R 503-  
1940 A W R (H C) 357-1940 A L J 377-  
A I R 1940 All 326 (F B )  
—S 47—Appealability of orders—Test—Order  
confirming sale—Appeal if lies See BHOPAL C P  
CODE, S 58 190 I C 174  
—S 47—Appeal—Application for transfer of

## C P CODE (1908), S 47

See 1939 Dig, Col 162 NAMASIVAYA MUDALIAR v.  
SRINIVASA IVENGAR 189 I C 732-13 R M 312-  
A I R 1940 Mad 54  
—S 47—Appeal—Order staying or refusing to  
stay execution under Bengal Agricultural Debtors'  
Act  
The question whether the execution of a decree is or  
is not barred, whether temporarily or permanently, by

—S 47—Appeal—Decree—Execution for sum less  
S 39

—S 47 and Sch II, para 21 (2)—Appeal—  
Decree under Sch II para 21 (2)—Question relating  
to its execution—Appeal if lies from decision

When a decree passed under Sch II, para 21 (2) C  
P Code is executed, if any question relating to its execu-  
tion discharge or satisfaction is raised by any of the  
parties to the decree, the determination of such a ques-

—S 47—Appeal—Mortgage bond—Provision for  
instalment payment—Default clause giving mortgagee

—S 47—Appeal—Order of sale—Appealability  
under S 73—Appealability See 1939 Dig  
NINGAPPA v ADIVETTA 186 I C 372-1

—S 47—Appeal—Order refusing stay  
—Revision, if competent

An order staying or refusing to stay execu-  
tion upon the ground that execution is  
barred by some special law is subject to  
decree An application in revision filed  
order refusing to stay execution is, therefore  
allowed (Edgley, J) ABINASH CHANDRA v BISHUTI  
BHUSAN 41 C W N 587

—S 47—Appeal—Order settling terms of sale  
proclamation—Appeal—Decision on rights and liabilities  
of parties with regard to execution—Res judicata—  
Omission to appeal—If can be objected to at later stage

P Code, refusing to allow execution in favour of one of  
the decree holders made for the protection of the interest  
of the other joint decree holders (Almond, J C)  
ABDUL RAHMAN v GHULAM ALI 189 I C 603-  
13 R Pesh 12-A I R 1940 Pesh 24.

—S 47—Appeal—Order under O 21, R 16 See  
1939 Dig, Col 163 MAUNG KHIN MAUNG v  
KARUPPAYA PILLAI 186 I C 322-12 R E 261

—S 47—Appeal—Order under O 21, R 66—  
Appeal—Decision as to—Whether sale is to be held by  
Court or Collector—If judicial order or administrative  
act See 1939 Dig, Col 163 MAHADEO SUNDER  
v KHANDERAO SITARAM

186 I C 61-12 R B 290.  
47—Appeal—Order under O 21, R 93—  
Appealability See C P CODE, S 2 (2)

42 Bom L R 367.  
—S 47—Appeal—Order under S 11, Bihar Money

the decree itself the proper remedy was by way of

aside—Application by auction purchaser for compensa-  
tion for improvements See C P CODE, Ss 151 144  
AND 47 A I R 1940 Lah 59.

—S 47—Applicability—"Parties"—Mortgage suit  
—Person impleaded as party to suit but not made party  
to application for personal decree—Claim by to property

## C P. CODE (1908), S. 47.

*attached in execution of personal decree—Procedure—If governed by S. 47 or O 21, R 58*

In order to determine whether the parties to a proceeding arising in execution are "parties" within the meaning of S 47, C P Code, the governing factor is

application for a personal decree if he was a party to the suit in which such decree is passed S 47, C P Code, would govern the investigation of a claim preferred by him in relation to the execution of such personal decree. The personal decree is not a distinct decree nor the proceeding for a personal decree a separate proceeding from the trial of the suit, and therefore O 21 R. 58, C P. Code, is not applicable to a claim preferred to property attached in execution of the personal decree by a person who was a party to the mortgage suit but who was not party to the personal decree proceedings. The fact that he drafts his claim as one under O 21, R. 58, C P. Code, does not make S 47 inapplicable (Wadhwa)

debtor's  
claim  
paying  
refund

*Separate suit for refund*

In execution of a decree against the judgment debtor the property of his transferee prior to institution of suit against him was wrongly sought to be attached. In order to save his property from attachment the transferee deposited the decretal amount in Court and applied for refund of the amount paid.

Held, that the fact that attach the property of the enough to bring the refund within the scope of S 47 did not fall directly within resort to S. 151 was appropriate refund was not necessary SINGHANI, *In re*.

A L.R. 1940 Sind 191.

—S 47 and O 21, R 58—*Applicability—Representative—Insolvent judgment—Objection by Official Receiver in him from date of insolvency—allowing objection—Appeal—Suit.*

No hard and fast rule can be laid down regarding the

## C P. CODE (1908), S 47.

See 1939 Dig, Col. 165. RABINDRA NATH ROY & DHIRENDRA NATH ROY. 186 I.O. 673=

12 R O 509=A L.R. 1940 Cal 82. —S 47—Bar of suit—Cross suits—Agreement to take decrees for equal amounts and to set off each

from execution—Decrees execution by one party —If barred. See 1939

AHU & SATRUGHANA IO 606=12 R M 658.

—S. 47—Bar of suit—Decree for money against ward of Court of wards—Leave of Court not obtained—Execution disallowed on ground of non compliance with S. 60-A, Bengal Court of Wards Act—Suit on decree—Maintainability—Principles

An action on a judgment is permissible only where the judgment cannot be enforced in some other way. A simple money decree can be enforced by execution, and a suit based upon such a decree will not lie. The fact that such a decree cannot be executed by reason of S. 60 A of the Bengal Court of Wards Act—leave of the Court not having been obtained or accorded—is not an inherent defect in the decree itself which renders it

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21 Pat L.T. 947.

—S 47—Bar of suit—Decree passed against person in representative capacity—Omission by him to raise in execution objection in his own capacity regarding property—Subsequent suit—If barred

Where a decree is against a person in a representative

ings, in his own capacity, raise any objection with regard to the property against which the decree is being executed. If he has failed to do so his subsequent suit

—S 47—Bar of suit—Partition suit in joint Hindu

and Mockett, J.J.) OFFICIAL RECEIVER, GUNTUR & SESHAYYA. 62 L W 810=1040 M W N. 1225=

—S 47—Bar of suit—decree—Suit to enforce

or O 21, R. 58 (S. 47, C. P. Code)—right to redeem property. Defendant No. 1 who was a prior mortgagee from

## C P CODE (1908), S 47

R 89, C. P. Code, to have the sale in favour of the defendant No 1 set aside, but his application was dismissed. Plaintiff did not appeal against the order refusing to set aside the sale, but he instituted a suit for redemption of the whole mortgaged property, as pur-

redeem half the property which he had purchased on

—S 47—Bar of suit—*decree holder auction purchaser debtor and another—Latter claims property from judgment debtor*

S 47, C. P. Code, can only arise between the parties to a suit where the contest is between them or also a stranger. A suit by a purchaser for possession of property from a judgment-debtor and another person who claims that he had purchased that property from the judgment debtor before the attachment proceeding is, therefore, not barred by the provisions of that section. (*Sen, J.*) **BADAN CHANDRA BARWAT, RAMJIBAN SOHANLAL.**

41 O W N 827  
—S. 47—Bar of suit—*Suit for possession by mortgagee decree-holder auction purchaser*

The mortgagee decree holder does not claim possession of the property ordinarily. Therefore an application for possession of the property by the auction purchaser even though he is the decree holder himself is not barred by S. 47, and the auction purchaser must therefore remain the decree-holder. This being so such application must be taken to be made by the right accruing to him for possession by virtue of that sale. Therefore if a party claiming under the judgment-debtor resists the auction-purchaser, the question neither relates to the execution or discharge or satisfaction of the decree, nor is it between the parties to the suit in the sense that the parties arrayed against each other are representatives in interest of the decree holder and judgment-debtor or vice

## C P CODE (1908), S. 47.

in the original suit. Therefore it is a suit by the auction-purchaser for property is not barred by reason of the S. 47. (*Dalip Singh and Sale, J.J.*)

ABDUL GHANI v. LALA LAL CHAND  
190 IC 635—AIR 1940 Lah 230.

—S 47—Bar of suit—*Suit on sale but decree as on mortgage—Defendant failing to pay amount decreed and plaintiff put in possession as per decree—Subsequent*

future maintenance creating charge on property—*Recoversability by executor*

he is not a party to the suit

—S 47—Executing Court—Powers of Decree against karnavan of Malabar tarwad—Executability against tarwad—Power of executing Court to determine. See MALABAR LAW—TARWAD.

1939 B I W N 1229  
—S. 47—Executing Court—Power to go behind decree—Decree for instalments—Subsequent decree for instalments coupled with

contract of consideration. See C. P. Code Pat. 719.

—Ss 47 and 48—Execution—Adjustment of decree during—Power of Court to recognize—Revival of extinction application—Test.

On an application for execution of a final decree for sale, a date was fixed for sale. But on a day prior to the one so fixed the parties agreed upon an arrangement of payment by instalments and that in case of payment, the whole amount was to become recoverable by sale. The compromise or arrangement was made to the Court with a prayer for the

## O P. CODE (1908), S 47

execution The execution was accordingly postponed. There was subsequently default in the payment of instalments and an application for execution was presented more than 3 years. It was contended that the arrangement was barred by limitation. The Court had jurisdiction.

the circumstances of each case and in each case the substance of the matter must prevail over the form of the application (*Iqbal Ahmad Bajpai and Ismail JJ*)  
MAHENDRA RAO v BISHANBHAR NATH

ILR (1940) All 377=188 IC 323=13 RA 1=  
1940 A LJ 301=1940 A WR (HC) 281=

S 47—Question relating to execution—Decree against property  
S 47 S  
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appeal precludes a

ution of the to the first

step in execution. An order overruling the objection is an order under S 47 and is consequently appealable. (*Nasim Ali and Rau, JJ*)  
GANESHIDAS BADRINARAIN v AMULUK CHAND  
OSWAL 187 IC 895=12 RC 628=

70 CLJ 438=AIR 1940 Cal 161  
Ss 47 and 68—Question relating to execution—Sale by Collector—Application to set aside—Forum

S 47—Parties representatives—Who similar to that of shet  
AZHAR HUSAIN v

S 47 and O 21, R 58—Relative scope—Inquiry—Difference—Question of title  
Suppose of deciding a claim under O 21, R the Court is bound to find who was in

## O P CODE (1908) S 47

possession at the time of the attachment. It is not bound to find who had the title to the land or property attached and can refer parties to a suit for determining title. For

daughters to declare property not liable to attachment and sale—If barred See 1939 Dig, Col 172 SHIVU SHIDDA v LAKHMI CHAND 187 IC 96=

12 RB 412

S 47—'Representatives'—Meaning of

The word 'representatives' in S 47, C P Code, is used

S 47—'Representative'—Meaning—Auctioner's property in execution  
in S 47, C P Code, is used as a representative of the

S 47—'Representative'—Sale of judgment Land Revenue Code for representative of judgment charge on judgment against purchaser at

revenue sale  
A 'representative' is a person in whom the interest of a party to the suit has vested either by an act of the party, i.e. a transferee from the party or by an operation of law. Operation of law would ordinarily mean and include cases of a testamentary and intestate succession upon the death of the party to the suit or upon his insolvency or cases of forfeiture. A Court auction purchaser at a sale in execution of a decree who is a stranger is not a representative of either the judgment debtor or the

so far as Bombay is concerned. There is no action between the position of a voluntary judgment debtor or a decree holder and a Court auction purchaser. When a Court auction purchaser purchases from a judgment-debtor a revenue charge on land under the Bombay Land Revenue Act, a toll contract is not a real contract and cannot therefore be executed of the decree creating a charge of the debtor (*Rangnatar, J*)  
ANGOUA v SHIVAPPA  
42 Bom LR 1123

DUNDAPPA  
S 47 and O 21 R 2—Scope—Adjustment of decree by executory agreement—Validity—Agreement varying time or manner of enforcement of decree and

## C P CODE (1908) S 47

agreement to ally adjusting and immediately extinguishing decree—Distinction—Application to execute decree on ground of repudiation of agreement—Main tenability See 1939 Dig Col 173 LACHHUMAL MORDUVALE ATTAMAHOMED KHAN

187 IC 428—12 B.S. 239

—S 47—Scope—Duty of Court to work out right finally in execution See T P ACT SS CO AND 82

21 Pat LT 227

—S 47—Scope—Lia of debtor—Instalment mortgage bond—Default clause giving right to sue for whole amount on default in payment of two consecutive instalments—Default—Suit for overdue instalments only—Decree for sale—Execution—Plea that suit should have been for whole amount—Competency See 1939 Dig, Col 174 SUBBANJA V VENKATASUBBANJA

1939 M.W.N. 1239—A.I.R. 1940 Mad 298

—S 47—Scope—Validity of execution sale

The question as to the validity of the execution sale clearly a matter which arises between the suit and relates to the execution of the decree—fore falls within the purview of S 47, (Espley, J) SHEIKH TANIZALI V BUNIVA ILB (1940) 2 Cal. 334—7.

—S 47 (2)—Conversion—Appellate Court, I exercise power See 1939 Dig, Col 174 SAT NA V CHANDRA MOHAN A.Y.

—S 48—Applicability—prior application—Compromi—Failure to carry out terms—execution—If one for revival BHAGWANDAS V PYARE LAL

—S 48—Applicability—Execution applications presented after 12 years—Application beyond 12 years for amendment to include name of person not named or specified in original—Maintainability—If fresh applications continuation of original application

An application by which it is sought against properties other than those mentioned in the first execution application or against a person not impleaded or mentioned in the first execution application must be regarded as a fresh application within the meaning of S 48 C P Code and no such application can therefore be entertained after 12 years from the date of the decree. There is no difference in principle between an attempt to proceed at a late stage in the proceedings against properties which it was not to proceed against in the original application attempt at a late stage to proceed against a person than the person against whom it was originally sought to execute the decree. Applications for amendment of an execution application by which the decree-holder seeks to execute his decree against a person who was not named in the original application as presented to Court within the period of limitation or to execute his decree against property which was not specified in the application as originally presented must be regarded as fresh applications and not as being in continuation of the application already on the file and if made after the expiry of 12 years from the date of the decree they must fail as time barred and cannot be allowed. Where the date on which an application to amend an execution petition is presented is a date on which a fresh application to execute the decree would have been barred by S. 48 C P Code, then the Court will apply the same principle as they would in dealing with an application which is in form a fresh application (Afzalulla and Anwarud Din J) RAU RAN BIJAY PRASAD SINGH V KESHO PRASAD SINGH 21 Pat LT 407—A.I.R. 1940 Pat 571

## C P CODE (1908) S 48

—S 48—Application for execution—If fresh in continuance—Test

The question whether an application for execution is a fresh application or one in continuance of a former execution must be determined on the facts of a particular case regard being had to the substance rather than to the form of the application. In order that an application may be treated as one to continue an earlier execution the first condition necessary is that earlier execution case must not have been finally disposed of. If it was so disposed of no question of continuance can arise. If, on the other hand there was an interruption in the earlier proceeding by reason of which Court, being unable to grant the appropriate relief struck off the case it cannot be said to have been finally disposed of. It will then be considered to be still pending and may, if a proper case, be revived and.

Where an application is dismissed decree-holder is entitled to revive it when it is after the date of the decree (Din Mahomed, J) KUNDU MAL DAULAT RAM VIDYA PARKASH 190 IC 379 13 B.L. 149—A.I.R. 1940 Lah. 1

—S 48—Previous application for execution dismissed for default—Second application for same relief—If revival of prior application

Where a previous application has been dismissed decree holder is not entitled to revive it for relief prayed for in the previous application (DASS V ILAFIZ ALI 186 IC 860—12 B.L. 428 AIR 1940 Lah. 3

—S 48—Scope—Execution application not properly filed within 12 years—Amendment—Powers of Court See 1939 Dig Col 176 JINDRANA LATCHANNA DOIRA 187 IC 334—12 B.M. 702 A.I.R. 1940 Mad. 1

—S 48—Scope—If affected by Art 182, Limitation Act—Time-barred decree—Amendment under S 152 C P Code—If furnishes starting point of limitation for execution

Art 182 of the Limitation Act leaves the provisions of S 48, C P Code, untouched and there can be no execution of a decree governed by S 48 C P Code when twelve years have passed from the date of the decree, amendment or no amendment. It is true that there is no period of limitation for an amendment of a decree to correct an accidental slip or omission under S 152, C P Code but that does not affect the law of limitation. A correction made in a time-barred decree leaves the decree still time barred (Leach C J Anwarud Din, Anwarud Din and Sonawars JJ) RAMACHANDRAN

C. P. CODE (1908), S 48

C. P. CODE (1908), S. 55.

is not the date of the decree but the date of default in the payment of the instalments (*Thom, C J and Gangs v HAR*)

Property—If amounts to

188 I C 891=1

—S 50—Jurisdiction—

—Substitution of heirs—f

decree is transferred for execution—Order by transferee Court for substitution—Legality—Interference in appeal—S 99

Under S. 50, C. P. Code, it is the Court which passed the decree which has power to substitute heirs of a deceased judgment-debtor and not the Court to which the decree is transferred for execution. But when a

A I R. 1940 Pesh 33.  
—S 52—Property of deceased in hands of his  
der to proceed

hands of his  
at it belongs  
property may be

attached in execution of decree against her as executrix.

The decree holder may not file an administration suit be

h he may work out

umbrous method of

desires to attach

ids of the judgment

him (*Roberts, C. J*)

. EZEKIEL.

A I R. 1940 Rang. 78.

devolving on heir of

debtor—Mortgage by heir—Priority over debt due by

deceased See 1939 Dig, Col 178 *NAMBIAR v.*

CHANDUKUTTY. 186 I C. 323=12 E.M. 622=

A I R 1940 Mad 22.

—S 53—Scope and applicability of—Decree for

compensation in lieu of specific performance

S 53 C. P. Code is creating a fiction for

On

the

The

liable to attachment with dishonest intention—Forfeiture of protection.

The explanation applies only to Cl. (d) of the proviso. By virtue of the explanation property which

when arises.

Where a surety bond has been executed under S. 55 (4), C. P. Code, unless there has been failure in both respects, namely, in applying for adjudication and in

## C. P. CODE (1908), S. 55

appearance, the decree holder is not entitled to proceed against the surety. Where the judgment-debtor applies for adjudication, one of the conditions and the decree holder is not thereafter the Court to realise the security (*Hem*)

—S 55 (4)—Surety under Execution—Procedure—Death of surety pending sale—Substitution of heirs—If essential before sale—Notice under O 21, R 22—Necessity

An execution proceeding cannot be continued

tion and before sale, the decree holder should, in order that he may continue the proceedings, substitute, in the place of

Objections proceeding can be further continued against them. The circumstance that the legal representatives have already entered appearance in the execution proceeding does not dispense with the issue of notice under O 21, R 22 or of hearing their objections, if any

*Rowland J*—There can be no short cuts in

## C. P. CODE (1908), S. 60.

—S 60—Property—Preliminary decree for dissolution of partnership and accounts—Attachability—Mode

—S 60 (1), Provisos (a) to (p)—Exemptions under—If cumulative *See* 1939 Dig Col 181, MUNICIPAL CORPORATION OF RANGOON v. RAM BEHARI.

185 IC 460=12 R.R. 191.  
—S 60 (1) (b) and (c)—'Agriculturist'—Test. *See* 1939 Dig, Col 181, NIHAL SINGH v. SIRI RAM.  
I L R (1940) Lah. 23 (F B).

## A.I.R. 1940 Cal. 5.

—S 60 (1) (c)—'Agriculturist'—Determination of status—Material time—Property attached when in

—S 60 (1) (c)—'Agriculturist'—Meaning of.

A person who is proved to have cultivated land in one year and who admits not to have cultivated any land in the subsequent year cannot be said to be an 'agriculturist' within the meaning of S 60, C P. Code. (*Din Mahomed, J*) BANARSI DAS v. KULIA.

42 P L R. 261.

—S 60 (1) (c)—Decree against non agriculturist

12 R P 558=21 Pat L T. 369=6 B.R. 418=  
1940 P W N 163=A I R 1940 Pat 147

185 IC 317=12 R.L. 273 (2).  
—S. 60 (1) (1)—Attachment of salary in contraven-

CHAND SHIVA CHARAN LAL.  
I.L.R. (1939) All 901=186 IC 689=  
12 E A 442=A I R. 1940 All 24.

Y. D. 1940—14

another subsequent to that date, to which the amendment would apply, the half salary of the judgment-debtor has to be attached and distributed rateably between



## C P CODE (1908) S 60

two decree holders (*Dusser*) RAM PARTAP v RAM CHANDRA 1939 A M L J 157  
 —(as amended in 1937) S 60 (1) (i) and (k)—*Scope and effect of—Decree obtained against public officer in suit instituted after 1st Jun 1937—Extent of salary attachable—Contribution to Provident Fund—Deduction of—Salary—If means not salary or gross salary—Income tax—If deductible*

The C P Code Amending Act (IX of 1937) enlarges the exemption from attachment of a judgment debtor's salary provided the proceedings relate to suits instituted on or after 1st June 1937. The new Cl (i) of S 60 (1) exempts from attachment in execution salary of a public officer to the extent of the first hundred rupees and one half the remaining salary. Further Cl (k) of S 60 (1) exempts from attachment in execution salary of a public officer to the extent of the first hundred rupees and one half the remaining salary. Further Cl (k) of S 60 (1) exempts from attachment in execution salary of a public officer to the extent of the first hundred rupees and one half the remaining salary. Further Cl (k) of S 60 (1) exempts from attachment in execution salary of a public officer to the extent of the first hundred rupees and one half the remaining salary.

salary over the first hundred rupees which is not already reserved for the judgment debtor by Cl (i). In other words a decree-holder who is hit by the amendment of 1937 is only entitled to look to the balance after deducting the Provident Fund contribution from the amount that left over after giving effect to the exemption granted by Cl (i).

salary only after such deduction' (*Dhazle J*) BHAGWAN DASS RAMPRASAD v SECRETARY OF STATE 21 Pat L T 776

## able salary

The allowances of a Railway guard over and above his salary are not exempt from attachment. Where an advance taken by a guard from his Provident Fund is being recovered from him in monthly instalments such

Although S 60 C P Code prohibits the attachment of provident fund money it is open to a decree holder against the estate of the deceased to appoint a receiver in execution. BARAMDEO PANDEY v MRS FAY SMI

—S 60 (1) (k)—Subscriptions payable—Exemption—See 1939 D G Col 183 MUNICIPAL CORPORATION OF RANGOON v RAM BEHARI 185 IC 460—12 R R 194

—S 61—Applicability—Adjustment within meaning of O 21, R 2

Where there is an adjustment within the meaning of O 21 R 2 the provisions of S 64 have no application to a transfer by way of mortgage effected by the judgment debtor for satisfaction of the decree under which

## C P CODE (1908), S 61

the property was attached in execution for a transfer made contrary to the provisions of S 64 is only void as against claims enforceable under the attachment. When there is an adjustment for full satisfaction of the decree out of Court there is no further claim which could be enforced under the attachment and therefore the transfer cannot be void. (*Almond J C*) GHULAM NABI v AZIZULLAH 188 IC 757—13 E Pesh 4—AIR 1910 Pesh 18

—S 61—Applicability—Attachment—Subsequent mortgage by judgment-debtor—Execution sale—Private

A sale by the Court in pursuance of an attachment cannot be said to be the same thing as a sale by a judgment debtor independently or in spite of the attachment.

by the judgment debtor himself who cannot derogate from his grant even if made after the attachment. A sale by the judgment debtor with the permission of the Court and after obtaining a certificate from Court under O 21 R 83 C P Code is a private sale and is not a sale either by or under the orders of the Court. AIR 1910 Pesh 18

ment in execution the judgment debtor mortgages his properties and subsequently one of the items of the mortgaged properties is sold in execution but before

attachment withdrawn, the purchaser cannot claim that the mortgage is void as against him under S 64 C P Code. Both the mortgagee and the private purchaser stand in the shoes of the judgment debtor and the moment the attachment ceases to exist, the mortgagee of the attachment takes the subsequent purchaser since both alienations are (judgment debtor). Nor is he void on account of the Act S 52 T P Act does not affect the rights and not the rights of the person who has dealt with the property or of those who stand in his shoes. It cannot be contended that every

—S 61—Applicability and scope—Attachment before judgment—Requisites of validity—Mere order of attachment—Sufficiency—Private transfer—When void—Non compliance with formalities of due attachment—Effect on private alienation—See 1939 D G Col 184 BAI HAKIMBU v DAYABHAI 185 IC 655—12 R R 258

—Ss 61 and 73—Construction and scope—Claims enforceable under the attachment—Attachment

## C P CODE (1908), S 64

*ment—Subsequent private alienation—Subsequent attachment in another decree—Effect of on prior alienation—Sale in execution of latter decree—Title of purchaser—If prevails over the private alienation*

Per C. J., Pandurang Row and Patanjali JJ—Under S 64 C P Code when a proper claim is enforceable under that particular attachment the section does not go beyond this. An attachment effected after a private alienation is not assisted by an attachment before the alienation. If the proceedings in which the second attachment has been instituted before assets have been into Court the creditor would be entitled to distribution of the property is sold in the early proceedings but if the sale takes place as the result of the attachment effected after the private alienation a person who buys the property at the Court auction would not obtain a good title.

*Abdur Rahman and Krishnaswami Ayyangar, JJ—*

## C P CODE (1908), S 66

*debtor as insolvent by foreign Court—Effect of—Private international law—Attachment subsequent to adjudication—If prevails against foreign receiver. See 1939 Dig Col 185 VEERANNA SHAH v OFFICIAL*

*Attachment before judgment—Sale of property subsequently in pursuance of contract made prior to attach-*

*—S 65—Auction purchaser's right to possession—When accrues—Right to mesne profits*

The title to the property after the sale is made absolute vests in the auction purchaser from the date of the sale according to S 65 and it is wrong to say that the

*judgment debtor only after attachment—Validity of*

*immediately after the attachment. As soon as it vests in him any defect that existed in the attachment before is*

*successive sales. It is not meant to confer on a default-privilege of rent free occupation for so he decree holder can delay confirmation garwala and Rowland, JJ) CHHATAR SHAH QASIM GHANI,*

*19 Pat 824 = A I E 1940 Pat 673 —S 65—Scope and effect of—Sale—If complete without confirmation—Order prohibiting sale—If prohi*

*of contract under order of Insolvency Court—Effect of as against attaching creditor. See 1939 Dig Col 185 DIRAVIYAN PILLAI v VEERANAN AMBALAM*

*185 I C 562 = 12 R M 554 —S 64—Scope of—Attaching creditor, if can claim to restrict the effects of a private transfer*

All that S 64, C P Code provides is that claims enforceable under the attachment will remain unaffected by the private transfer and the attaching creditor can

*A I E 1940 Pat 665*

*—S 66—Applicability—Purchase out of joint land at Court-auction—Certificate in the name of one—Suit by others, for possession, if barred by S 66. See 1939 Dig Col 186 BHUDARSAO v SAMARATHMAL*

*187 I C 60 = 12 R N 267 = A I E 1940 Nag 1*

*—S 66—Applicability—Revenue sale S 66 C P Code is confined to a purchase certified by the Court in the manner prescribed by the C P.*

## C. P. CODE (1908), S. 67.

purchase and basing title upon possession is traceable in the pleadings, the plaintiff could not get any relief  
(See C. P. Code, S. 67, and *Prasa*)

PRASA

*Applicability—Execution of decree of Court in British India*

—Ss 68 and 70—Collector proceeding—Relative powers of Collector and Civil Court

The transfer of the decree to the Collector does not oust the jurisdiction of the Civil Court in all matters. A Collector ceases to have jurisdiction to sell or to confirm the sale after the Court passing the decree recalls it. Whether the Collector fails to carry out the Court's order in disregard or in disobedience of the order must prevail against any order subsequent to that order to proceed with the case is suspended by an order of stay that might be passed on the decree. A Civil Court's order is as valid as if it were passed so as to empower to proceed with the execution of the decree communicated to the Collector.  
ISWARA S. MUKA

## C. P. CODE (1908), S. 73

Compromise agreeing to give up plea as to status—Order for sale—Subsequent claim for transfer of property—*See* *DER MFHTA v. DER MFHTA* (1939) 12 E. B. 290, application by—Legality—*See* *ND 151*, ang. L.R. 421

—S. 73—Applicability—Conditions—Creditor obtaining attachment before judgment but not taking out execution

Court can only divide may have made application of decrees. So attachment before judgment rateable distribution of the share he took out execution. *OIDIN v. DAKSHAYANI* (1940) M. W. N. 1151 = (1940) 2 M. L. J. 844. decree against Hindu co-creditor—Death of

coparcener—Sale of share in execution after death—Application for rateable distribution by other decree-holders without prior attachment of share of coparcener—Maintainability.

Where a creditor has obtained a decree against a Hindu coparcener and attached his undivided interest

—S. 73—Costs of realization—Goods attached by possession of Nazir in premises let to lessee—Landlord's right of occupation as costs of realization—*See* *2-12 E. B. 324*

ferred to the Collector (*Ride, f*)

GULAB SINGH v. PATIALA DURBAR

AIR 1940 Lah 345

nt to particular  
*See* 1939 Dig.

C P. CODE (1908), S 73

S. 73 (*Tyabin, J*)  
TOYLAND—S 73 and C  
in S. 73, C P Co  
*Companies Act*

An order passed under S 186 of the Companies Act cannot be deemed to be a decree within the meaning of that word in S 73, C P Code. Any person in whose favour such an order has been passed, cannot claim rateable distribution (*Zia-ul-Haque and Yorke JJ*)

C P. CODE (1908) S. 73.

paid the son's share actually into Court. The sale by the receiver beyond the time fixed was unauthorised and irregular, as also the receipt by him of the sale proceeds, and the subsequent ratification by the Court could not transmute the unauthorised receipt of the

*Crucial date—Dismissal of execution application after the receipt of assets—Right*

The crucial date for rateable distribution under S

which the assets are received. On this date all the decree holders whose applications were pending for execution in the Court and who had not received satisfaction became entitled to share. Their right to share having accrued not by the mere fact that dismissed in default later on. (*F*)

DAS v MURLIDHAR

1940 N L J. 310 =

—Ss 73 and 145—Realization

Another decree-holder against same

If can claim rateable distribution S

189 SAKHARAM v MAHADEO

186 I O 583 = 12 R N. 229 = A I R. 1940 Nag 79

—S. 73—Receipt of assets—Date of—Decree against father and son—Official Receiver directed to sell son's share also within time fixed—Failure to sell—Sale subsequently by receiver afterwards ratified by

—Ss 73 and 47—Right to rateable distribution—

rateable distribution of the sale proceeds, of that property

On an execution sale being set aside the decree

proceeds of the attached order directing the decree-holder S. 47, C P Code, and (*Pallock J*) BHIOBAJ

v. SHIOLAL.

188 I C. 380 = 12 R N 337 =

1940 N L J. 215 = A I R. 1940 Nag 267.

—S. 73—Same judgment-debtor—Decree against debtor during his lifetime and decree against his legal representatives—If passed against the same judgment-

decree against a debtor executes it against creditor obtains a

decree against such legal representative in respect of

pendent, were all holders of decrees against the 3rd

months and to deposit into Court the share of the non insolvent son, the 3rd respondent. The sale did not take

—S 73—"Same judgment-debtor"—Decree against Hindu father and decree against father and son—Sale

## C P CODE (1908), S 73

1940 M W N 286 = A I R 1940 Mad 525 =  
(1940) 1 M L J 553

—S 73 (2)—Sale in favour of decree holder purchaser confirmed—Prior applications by other creditors for rateable distribution not disposed of—Remedy of latter

A creditor in execution of his decree sold the judgment debtor and purchased it himself but no deposit in connexion with the sale. He set off money against his debt. Prior to the sale three applications for rateable distribution had been put forward by other creditors. The sale was however eventually confirmed without the applications for rateable distribution being disposed of.

—S  
See 1939

—S  
Commiss  
to issue  
AND 75

—S 80—Applicability—Receiver—Suit against for royalty of lands in his possession—Notice—Necessity  
Chatterji J.—Though a receiver appointed in a suit

—S 80—Different causes of action united in suit—Suit bad for want of  
of them—Entire suit, if

It is quite true that if the causes of action are united in one suit, the failure of one of them the suit fails. Under S 80 there is no reason why a suit should be dismissed. But where a person for declaration of the receiver of that property is added as party and there are definite allegations against him of

MOHAN 186 I C 584 = 12 R C 495 =  
44 C W N. 74 = A I R. 1940 Cal 1

—S 80—Municipal Committee superseded under

service of the notice under S 8  
Deputy Commissioner who is the  
as well as the administrator of the  
is valid and proper (Din Akh  
SHAFI: SIALKOT MUNICIPAL

## C P CODE (1908), S 80

—S 80—Notice served under old section—Suit lodged subsequent to Government of India (Adaptation of Indian Laws) Order, 1937—Validity of notice

A notice served under the old S 80, C P Code, prior to Part III of the present Government of India Act and

—S 80—Official Receiver—Notice—Necessity for. Obiter—S 80 C P Code applies to all forms of action and to all kinds of relief as against a public officer

Receiver is, therefore, ce was served on him  
ASIA KHATUN v  
44 C W N 586 =  
A I R 1940 Cal 578.

—S 80—Official Receiver—Notice—Necessity for. Obiter—S 80 C P Code applies to all forms of action and to all kinds of relief as against a public officer

Where on the refusal of a District Registrar to appoint a receiver in insolvency—Notice, if

Registrar and the suit is not brought against him but against the receiver and as such no notice under S 80 C P Code, is necessary. Further as a 'special law' and S 80, apply in view of the provision under S 77 of the Insolvency Act, 1907, the period of 30 days is less provided by S 80, C P Code

JI) SULTAN AHMAD v  
GOHAR BEGAM 186 I C 505 = 12 R A 400 =  
1939 A L J. 1151 = 1939 A W R (H C) 878 =  
A I R 1940 All 108

—Ss 80 and 2 (17) (g) and (h)—'Public officer' of Wards manager See 1939 Dig, Col 190.  
CHANDRA DAS v MANAGER, B M W.

C P CODE (1908) S 80

ment and is not a public officer within the meaning of S 3 (17) and S 80 C P Code and a suit against him cannot be defeated on the plea that no notice was given as required by S 80 C P Code (*Pandurang Rao and Howell JJ*) GOVINDA CHETTIAR v UTTUKOTTAI CO OPERATIVE SOCIETY

I L R (1940) Mad 929-52 L W 131-  
1940 M W N 782-A I R 1940 Mad 831-  
(1940) 2 M L J 211

Ss 80 and 2 (17)-Public officer-Receiver

It is the duty of a receiver to take charge of the properties in suit on behalf of the Court. He exercises his functions under the supervision and control of the Court and is remunerated under its orders. He can thus be deemed to be an officer of a Court of Justice whose duty it is to take charge or dispose of any property within the meaning of S 2 (17) (d). Even if he is not an "officer" he is clearly a person especially authorized by a Court and therefore a Receiver (*Roxburgh JJ*)

44 C

S 80-Suit against estate in hands of receiver-Notice, if necessary

No estate vests in the receiver by virtue of his

against the receiver personally and the suit is really against the estate which does not vest in the receiver, but which is held by him under orders of the Court who made the appointment, the suit cannot be said to be one against the receiver within the meaning of S 80. In other words S 80 contemplates a suit against the receiver which seeks to make him personally liable for acts, done or purporting to be done by him in his official capacity and it does not contemplate a case where a suit for possession is

S 80-Two notices-Suit filed before expiry of two months from second n  
1939 Dig Col 190 SEC  
DISTRICT BOARD RANGPU

B 85-Construction-  
State by person not duly  
Dismissal-Subsequent obtain  
appeal from dismissal-If cu  
regular

C P CODE (1908) S 91

The provisions of S 85, C P Code, are specially enacted for a privileged class of persons such as a Sovereign Prince or a Ruling Chief, who are parties to suits or legal proceedings and are subject to the rule of strict construction and must be rigidly followed. A suit instituted on behalf of a Ruling Prince or an Indian State by a person who is not an authorised agent under O 3, R 2 C P Code, and without the authority required by S 85 C P Code, is a defective suit and has to be dismissed. A subsequent authority obtained under S 85 for the first time after the presentation of an appeal upon the dismissal of the suit cannot cure the defect so as to make the suit a properly instituted suit (*Wassodeo and Indarnarayan JJ*) ABDUL LATIF G

See 1939 Dig, Col 190 MAHARAJA OF JAMMU AND KASHMIR v EXECUTIVE OFFICER, SIALKOT  
42 F L R 228,

applicability-Insolvency proceedings-  
tion by debtor of Ruling Chief-  
cessary  
de, in terms applies only to suits, and  
cannot be made applicable to insolvency proceedings  
initiated by a petitioning debtor merely by reason of the  
fact that a Sovereign Prince or Ruling Chief is one of  
ed by a debtor  
ed by, therefore,  
ntioned in that  
MADAN LAL

S 88-Interpleader suit-Matter in dispute-Valuation

In an interpleader suit the matter in dispute is the title to the property which is claimed by two or more persons, and its valuation is the value of that property (*Mulla, J*) RAFIQ AHMAD v BABU RAM  
1940 A W R (H O) 448-1940 O A 707-  
1940 A L J 578-A I R 1940 All 452

to the person who sues, and it is based on the sound

C P CODE (1908), S 73

1940 M W N 286—AIR 1940 Mad 525=

—S 73 (2)—Sale in favor  
purchaser confirmed—Prior appls  
ditors for rateable distribution no

having been disposed of

Held, that any remedy open to other creditors for  
rateable distribution was by a separate suit under S 73  
(Almond, J C) SUKH RAJ SHAH v PIR GAUHAR  
SHAH 190 IC 158=13 R Pesh 21=

AIR 1940 Pesh 36

See 1939

—S  
Commissi  
to issue  
AND 75

—S 80—Applicability—Receiver—Suit against for  
country of land

C P CODE (1908), S 80

—S 80—Notice served under old section—Suit

Section 80 was intended to afford protection to  
officials against personal responsibility for official  
acts. If it is sought to make an officer personally  
liable for certain acts done or purporting to be  
done by him in his official capacity it is essential  
that notice should be

The object  
portunity to  
to the claim  
like amends or settle the claim if he is  
d (Mukherjee and Roxburgh, JJ)  
MOHINI v BIRAJ MOHAN  
C 584=12 R C 495=44 C W N 74=

AIR 1940 Cal 1

—S 80—Official Receiver—Notice—Necessity for

nt receiver in insolvency—Notice, if

—S 80—Different causes of action united in  
suit—Suit bad for want of notice in regard to one  
of them—Entire suit, if liable to be dismissed

It is quite true that if two or more causes of  
action are united in one suit and with regard to  
one of them the suit fails for want of notice under  
S 80 there is no reason why the entire suit sh  
be dismissed. But where in a suit again

Where on the refusal of a District Registrar  
to register a document executed by a receiver in  
district  
S 77  
plead  
C. P.

a 'special law' and S 80.  
of the provi-  
S 77 of the  
30 days is less  
10, C. P. Code  
AN AHMAD v  
12 RA 400=  
(H C) 878=  
1940 All 108

—S 80—Municipal Committee superseded under

S 80 and 2 (17) (g) and (h)—'Public officer'  
of Wards manager See 1939 Dig, Col 190.  
CHANDRA DAS v MANAGER, B M W.

## C P CODE (1908) S 80

ment and is not a 'public officer' within the meaning of S 3 (17) and S 80 C P Code and a suit against him cannot be defeated on the plea that no notice was given as required by S 80 C P Code (*Pandurang Rao and Howell JJ*) GOVINDA CHETTIAR v UTTUKOTTAI CO-OPERATIVE SOCIETY

I.L.R. (1940) Mad 829 = 52 L.W. 131 =  
1940 M.W.N. 782 = A.I.R. 1940 Mad 831 =  
(1940) 2 M.L.J. 241

—Ss 80 and 2 (17)—Public officer—Receiver

It is the duty of a receiver to take charge of the properties or to exercise his control of them in accordance with the orders of a Court charge or dispose of any property within the meaning of S 2 (17) (d). Even if he is not an 'officer' he is clearly a person especially authorized by a Court of law and therefore a public officer (*Roxburgh JJ*) *Mohtas*

44 C.W.N. 14 = A.I.R. 1940 Cal 1

—S 80—Suit against estate in hands of receiver—Notice, if necessary

No estate vests in the receiver by virtue of his appointment. He cannot sue or be sued in his official capacity.

against the receiver personally and the suit is really against the estate which does not vest in the receiver, but which is held by him under orders of the Court who made the appointment the suit cannot be said to be one against the receiver within the meaning of S 80. In other words, S 80 contemplates a suit against the receiver which seeks to make him personally liable for acts done or purporting to be done by him in his official capacity and it does not contemplate a case where a suit for possession is brought against the receiver personally.

—S 80—Two notices—Suit filed before expiry of two months from second notice—If premature See 1939 D.G. Col 190 SECRETARY OF STATE v DISTRICT BOARD, RAIPUR 185 I.O. 454 = 12 E.C. 373

—S 85—Construction—State by person not duly appointed—Dismissal—Subsequent obtains appeal from dismissal—If irregular.

## C P CODE (1908), S 91

The provisions of S 85, C. P. Code, are specially enacted for a privileged class of persons such as a Sovereign Prince or a Ruling Chief, who are parties to suits or legal proceedings and are subject to the rule of strict construction and must be rigidly followed. A suit instituted on behalf of a Ruling Prince or an Indian State by a person who is not an authorised agent under O 3, R 2 C. P. Code and without the authority required by S 85 C P Code, is a defective suit and has to be dismissed. A subsequent authority obtained under S 85 for the first time after the presentation of an appeal upon the dismissal of the suit cannot cure the defect so as to make the suit a properly instituted suit.

—S 85—Order signed by Chief Secretary—Validity See 1937 Dig. Col 190 MAHARAJA OF JAMMU AND KASHMIR v EXECUTIVE OFFICER SIALKOT 42 F.L.R. 223.

'applicability—Insolvency proceedings—Initiated by debtor of Ruling Chief—Necessary

S 80, C P Code, in terms applies only to suits, and cannot be made applicable to insolvency proceedings initiated by a private fact that a Sovereign Prince or Ruling Chief is a party to the suit.

(*Sharma and Rao, JJ*) MADAN LAL RAMPUR STATE

I.L.R. (1940) 1 Cal 344 = 189 I.O. 667 =  
13 E.C. 89 = 44 C.W.N. 333 =  
71 C.L.J. 316 = A.I.R. 1940 Cal 244.

—S 88—Interpleader suit—Matter in dispute—Valuation

In an interpleader suit the matter in dispute is the title to the property which is claimed by two or more persons, and its valuation is the value of that property (*Mulla J*) RAFIQ AHMAD v BABU RAM 1940 A.W.R. (H.C.) 448 = 1940 O.A. 707 = 1940 A.L.J. 578 = A.I.R. 1940 All 452.

to the person who sues, and it is based on the sound rule that no man should be harassed by a multiplicity of suits in respect of a single wrong. The principle has been adopted by the Courts in India as a matter of equity and good conscience. The wording of S 91, C.



C P. CODE (1908), S 91

C P CODE (1908), S 92

plaintiff individually, but  
in the interest of the  
trust is a public one the  
interest of the public),  
in the suit must be

P Code, on the other hand gives a new right of suit namely a right to sue for the removal of nuisance, even where there is no special invasion of any special right. Obstruct pathway is a public nuisance under S though it may not be a public right in sense S 91, however, does not take pendent right of suit which may exist override the provisions of O 1, R 8 and it does not take away any right of suit under O 1 R 8, even when it is a case of public nuisance. The special restrictions of S 91 can be overcome by proof of special damage and by proof of the invasion of the special rights of a limited class which will give an independent right of action. This latter right of suit is independent of both S 91 and O 1, R 8, C P Code. Therefore, in the case of suits relating to obstructions to village ways, if the plaintiff does not utilise the special provisions of

fort, and a suit to remove such a person is a suit for

namams in temple and on temple articles and putting different namams—Suit in respect of—Suit to compel trustee to take out duty in procession on certain occasions—Sanction—Necessity See 1939 Dig., Col 192  
AIYANACHARIAR v SADAGOPACHARIAR

189 IC 190=13 RM 183

—S 92—Applicability—Suit for accounts by trustees against past trustees—Consent of Advocate General—If necessary—Suit against some only of them—Maintainability

obstruction—Maintainability without sanction of Advocate General

—S 92—Jurisdiction of Civil Court—Removal

—S 91—Suit in respect of a personal right to use regarded as purely an office or dignity, there is no

## C P CODE (1908) S. 92

spiritual and moral supervision over the voluntary actions of the worshippers. In such cases, it may be futile for a Civil Court to interfere with the exercise of the duties of the office. No rights of property are connected with it and there is no machinery by which the Court can control the voluntary action of the worshippers or the mahant. (*M R Jayakar*) SATISH CHANDRA v DHARANIDHAR 67 I.A. 32=

I.L.R. (1910) 1 Cal. 266=51 L.W. 49=

1940 O.A. 112=185 I.C. 616=

1940 O.L.R. 64=1940 A.W.R. (P.C.) 33=

6 B.R. 291=1940 O.W.N. 104=21 P.L.T. 91=

1940 P.W.N. 110=71 C.L.J. 1=

1940 M.W.N. 172 (2)=12 R.P.C. 117=

44 C.W.N. 177=42 Bom.L.R. 295=

42 P.L.R. 153=1940 A.L.J. 409=

I.L.R. (1910) Kar. (P.C.) 47=

A.I.E. 1940 P.C. 24=(1910) 1 M.L.J. 371 (P.C.).

—S. 92—"Public trust"—Scheme of loans for educational purposes at low interest to Anglo Indian youths of Madras Presidency—If public trust. See 1939 Dug. Col. 194 EDWARD H. M. BOWER v HESTERLOW I.L.R. (1910) Mad. 300=189 I.C. 96=13 R.M. 135

—S. 92—"Public trust"—Wakf—Bulk of income reserved for family and family religious purposes

Where the bulk of the income from the wakf proper ties is to be spent for the family or family religious purposes

## C P CODE (1908), S. 92

1940 A.L.J. 409=44 C.W.N. 177=

I.L.R. (1910) Kar. (P.C.) 47=A.I.E. 1940 P.C. 24=

(1910) 1 M.L.J. 371 (P.C.).

—S. 92—Removal of mahant from office—Moral character of mahant—Power of Court to consider

In a suit under S. 92, C.P. Code, for the removal of a mahant from his office, the Court can consider the moral character of the mahant as directly relevant to the issues arising in the suit, (e.g.) his fitness to remain in office and his liability to be removed therefrom. (*M. R. Jayakar*) SATISH CHANDRA v DHARANIDHAR, 67 I.A. 32=I.L.R. (1910) 1 Cal. 266=

51 L.W. 49=1940 O.A. 112=185 I.C. 616=

1940 O.L.R. 64=1940 A.W.R. (P.C.) 33=

6 B.R. 291=1940 O.W.N. 104=21 P.L.T. 91=

1940 P.W.N. 110=71 C.L.J. 1=

1940 M.W.N. 172 (2)=12 R.P.C. 117=

42 Bom.L.R. 295=42 P.L.R. 153=

1940 A.L.J. 409=I.L.R. (1910) Kar. (P.C.) 47=

44 C.W.N. 177=A.I.E. 1940 P.C. 24=

(1910) 1 M.L.J. 371 (P.C.).

—S. 92—Right to sue—Sanction obtained by several persons—One of them dying before suit—Suit by rest if regular

Where sanction under S. 92 is obtained by several persons and one of them dies before the institution of

—S. 92—Removal of heads of religious endowment from office—Matters for consideration of Court

No general rule can be laid down besting the different kinds of religious heads of varying sanctity and eminence. It must depend upon the facts of each case. It may be that mere mismanagement or incapacity is, in the case of certain high dignitaries, not ordinarily sufficient for their removal from the performance of their religious duties, as distinct from their duties as managers of the properties of the institution. It may also be that a Court, in certain cases, exercises a wise discretion in not directing their total exclusion from their religious office where (e.g.) the lapses are misconception of their position or Court may sometimes not order their removal where they may associate with them a committee. But these are all matters for the Civil Court which must necessarily enjoy a wide discretion to decide what form of punitive or ameliorative order will suit the requirements of the case. The true rule in such matters can be stated to be that if it be

1940 O.L.R. 499=1940 O.A. 582=

1940 A.W.R. (C.C.) 298=1940 O.W.N. 639=

A.I.E. 1940 Oudh 421

—S. 92—Scope—Suit instituted claiming reliefs under S. 92—Sanction—Necessity—Subsequent amendment or abandonment of reliefs—If makes suit maintainable without sanction

The use of the word "instituted" in S. 92, C.P. Code, makes it incumbent on the Court to see what the prayers were in the plaint at the date the suit was instituted in order to satisfy itself whether S. 92 (2) C.P. Code, had been complied with, and for that purpose the Court may happen by way of some later stage in the suit falls under S. 92, it is the sanction of the Advocate. The fact that by subsequent amendment the relief or reliefs falling under S. 92 are struck would not make the suit maintainable.

*Broomfield, J.*—If a suit claims the reliefs specified in S. 92 and should therefore have been brought under

ad of by amendments. It would be a particular incident of the title (*Broomfield, J.*) *JASRAMJI v. ...* 13 E.L.R. 85= 910 Bom. 242 on succeeding to his father to look after a took possession he was

## C P. CODE (1908), S 91

special proof of damage, for in such a case the law will presume damage. It is by reason of these limitations that it has been held not to apply to cases of quasi public rights, such as village roads, and where the plaintiff sues either for himself as a member of the limited class of persons having special rights in common, or on behalf of that limited class. — O 1, R 8, C P Code, rights O 1, R 8 is merely an provides no new right of suit representation where a right of that right of suit is provided special rights of the limited class P Code, on the other hand gives a new right of suit namely, a right to sue for the removal of a nuisance even where there is no special damage invasion of any special right Obstruction pathway is a public nuisance under S 91, (though it may not be a public highway in sense S 91, however, does not take away pendent right of suit which may exist and override the provisions of O 1, R 8, and take away any right of suit under O 1 R 8, it is a case of public nuisance. The special restrictions of S 91 can be overcome by proof of special damage and by proof of the invasion of the special rights of a limited class which will give an independent right of action. This latter right of suit is independent of both S 91 and O 1, R 8 C P Code. Therefore in

## C P CODE (1908), S 92

not only in the interest of the plaintiff individually, but in the interest of the public, or in the interest of the trust itself (for where the trust is a public one the interest of the trust will be the interest of the public) and (4) the relief claimed in the suit must be one of the reliefs mentioned in the section. A prayer

for, and a suit to remove such a person is a suit for

trustee to take out deity in procession on certain occasions—Sanction—Necessity. See 1939 Dig Col 192  
AIVANACHARIAR v SADAGOPACHARIAR

189 IC 190=13 RM 183

—S 92—Applicability—Suit for accounts by trustees against past trustees—Consent of Advocate

not a public highway in the full sense in which all the members of the public who happen to go to the place have equal interest. He must show that it is a way or

brought by two or more persons as representing the general public in order to secure the proper administration of a public trust. A suit by trustees on the removal

—Sanction of Advocate General—Necessity—Proof of special damage. See 1939 Dig C  
PANDE v PARNESHWAR SINGH  
188 IC 249=12 R.

C P Code, in fit cases to remove the mahant not only management of the temporal also from his spiritual capacities of the office can

## C P CODE (1908) S. 92

spiritual and moral supervision over the voluntary actions of the worshippers. In such cases, it may be futile for a Civil Court to interfere with the exercise of the duties of the office. No rights of property are and there is no machinery by which control the voluntary action of the mahant. (*M R Jayakar*) SATI DHARANIDHAR

67 LA 32=  
ILLR (1910) 1 Cal 266=51 LW 49=  
1940 OA 112=185 LO 616=

1940 OLR 64=1940 A.W.R. (PC) 33=  
6 BR 291=1940 O.W.N. 104=21 PLT 91

1940 P.W.N. 110=71 CLJ 1=  
1940 M.W.N. 172(2)=12 E.P.O. 117=

41 C.W.N. 177=42 Bom.L.R. 295=  
42 P.L.R. 158=1940 A.L.J. 409=

ILLR (1940) Kar (PC) 47=  
AIR 1940 PC 24=(1940) 1 M.L.J. 371 (PC)

—S 92— Public trust—Scheme of loans for edu

—S 92—Public trust—Wakf—Bulk of income reserved for family and family religious purposes

Where the bulk of the income from the wakf properties is to be spent for the family or family purposes, some portion for religious purposes which cannot be regarded as wholly public in Mahomedan Law like *Mohurram* and *Ramzan* expenses and the surplus if any, is to go to *haj* expenses of the *mutawallis* the wakf is not a trust created for public purposes within the meaning of S 92 C P Code (*Ameer Ali J*).  
ABDUL HALIM v NASIEUNNESABI

44 C.W.N. 969

religious duties as distinct from their duties as managers of the properties of the institution. It may also be that a Court in certain cases exercises a wise discretion in not directing their total exclusion from the religious office where (e.g.) the lapses are due to causes like a misconception of their position or obligations. The Court may sometimes not order their total removal but

## C P CODE (1908), S 92.

1940 A.L.J. 409=44 C.W.N. 177=  
ILLR (1940) Kar (PC) 47=AIR 1940 PC 24=  
(1940) 1 M.L.J. 371 (PC)

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moral character of the mahant as directly relevant to the issues arising in the suit (e.g.) his fitness to remain in office and his ability to be removed therefrom (*M R*

1940 M.W.N. 172(2)=12 E.P.O. 117=

42 Bom.L.R. 295=42 P.L.R. 158=

1940 A.L.J. 409=ILLR (1940) Kar (PC) 47=

AIR 1940 PC 24=

1 M.L.J. 371 (PC)

son obtained by several

suit—Suit by rest if

regular

Where sanction under S 92 is obtained by several persons and one of them dies before the institution of suit, the suit instituted by the rest is valid (*Skemp J*).  
SHEO RAM v RAM CHAND AIR 1940 Lah 356

—Ss. 92 and 151—Scheme—If can be modified by application under S 151

A scheme particularly one relating to a Muslim wakf, can be modified by an application under S 151, C P Code (*Zia ul Hasan and Radha Krishna JJ*).  
FAIVAZ ALI KHAN v SAIFULLAH SHAH  
SOHARWARDI 189 IC 696=13 EO 97=

makes it incumbent on the Court to see what the prayers were in the plaint at the date the suit was instituted in order to satisfy itself whether S 92 (2) C P Code had been complied with, and for that purpose the Court must pay no regard to what may happen by way of amendment or abandonment at some later stage in the suit. If the suit as instituted falls under S 92, it

C. P. CODE (1908), S. 95,

C. P. CODE (1908), S. 100.

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Ct

S. 95—Burdens of proof—Compensation for

1910 O.A. 491—1940 A.W.R. (B E) 106.

S. 96—Appeal against findings when decree is not

S. 100—Finding of fact—Absence of—Power of

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E A 117=  
L J. 366=  
10 ALL 349.  
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no question

actually brought on the record in place of the former  
mutawalli. No order or decree in his favour could be  
passed till then. But if a decree were to be passed  
prior to such bringing on record, the irregularity affects

AIR 1940 Rang 126.

S. 100—Finding of fact—Construction of deed

—Interference.

Where it is clear that the lower appellate Court has

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## C P CODE (1908), S 100

—S 100—Finding of fact—Finding as to document being tampered with *See* 1939 Dig. Col 198  
**JAYARDAN PARIDA v PRANDHAN DAS**  
 190 IC 377—13 RP 193—7 BR 20—  
 AIR 1940 Pat 245

—S 100—Finding of fact—*wrong legal view—Interference*

Where a finding of fact that a artificial channel is based on evidence and on an incorrect view substitutes a natural stream or water

—S 100—Finding of fact—Finding that certain suit was not collusive *See* 1939 Dig. Col 198  
**KISHORI LAL v PIARE LAL** ILR (1940) Lah 60

—S 100—Finding of fact—Finding based on legal error—Inference of fraud (from *recusation*)—*Interference in second appeal*

Though a Court of second appeal is question the soundness of the finding of the Court below, and the decision of the effect of the evidence must stand firm yet the soundness of the conclusions findings of fact may involve a matter therefore be questioned by a Court of second appeal

appeal *See* 1939 Dig. Col 198 **NRIPENDRA NATH CHATTERJI v JUGAL PRASAD MANDAL**  
 185 IC 144—12 BC 306

—S 100—Finding of fact—Finding without considering all the evidence or based on inadmissible evidence—*If conclusive*

The High Court ordinarily has no jurisdiction under S 100 C P Code to reverse findings of facts of the lower appellate Court unless the findings are vitiated by

## C P CODE (1908), S 100

—S 100—Finding of fact—Interference—Chance of appellate Court coming to different conclusion on same evidence—*If a ground*

Where a lower appellate Court has not discarded the defence evidence on any general grounds but has

**NATH ZUTSHI v COMMERCIAL CREDIT CORPORATION LTD** 15 Luck 191—AIR 1940 Oudh 35

—S 100—Finding of fact—Interference—Existence of document not appreciated

When the existence of a document does not appear

—S 100—Finding of fact—Interference—Find-

—S 100—Findings of fact—Interference—Findings not recorded on objections specifically raised before lower appellate Court

If the lower appellate Court fails to consider and record findings on objections specifically mentioned in the grounds of appeal filed before it its order is liable to be set aside (*Abdul Qayoom, C J and Wasir J*)  
**MT JAINTIA v LUDAR MANI** 42 P.L.B.J. & K 21

—S 100—Finding of fact—Interference—Find-

Dig. Col 198 **CO-OPERATIVE SOCIETY DHINGRAN WALI v MAHOMED DIN** 42 P.L.B. 273.

—S 100—Findings of fact—Interference

Definite findings on questions of fact by the lower appellate Court cannot be questioned in second appeal. The question whether a person has been admitted to the tenancy or not by the zamindar is a question of fact and the findings on it must be accepted unless it is shown that it is without any basis of evidence (*Satish J.A.J.*) **SUKHRANI v DIN DAYAL**

1940 A.W.R. (BR) 89

*Finding that sale is not fictitious*

A finding that a sale is not fictitious, right or wrong is a finding of fact which cannot be interfered with in second appeal. (*Bhadi J*) **DAYAL DAS v SANT RAM** 42 P.L.B. 248.

—S 100—Finding of fact—Interference—Inference from facts—Question of law

A finding of fact based on oral evidence cannot be gone into in second appeal, but the legal inference to be drawn from proved or admitted facts is a matter of law (*Kama J*) **VAZIRHAI SULTANHAI**

## C P CODE (1908), S 100

GADMAL NATHMAL I L R (1840) Bom 505 =  
190 I C 420 = 13 E B 109 = 42 Bom L R 511 =  
A I R 1910 Bom 263

—S 100—Finding of fact—Interference—Lower Court omitting to consider all available evidence See 1939 Dig Col 199 GOBIND RAM v KAJU RAM

185 I C 652 = 12 R L 310 = 42 P L R 232

—S 100—Finding of fact—Interference—Lower Court omitting to mention certain evidence See 1939 Dig Col 199 RANJIT SINGH v NAWAB KHAN

185 I C 395 = 12 R L 284

—S 100—Finding of fact—Interference—Omission to refer to some documents

A finding of fact given by the lower appellate Court cannot be challenged in second appeal on the mere ground that certain documents are not referred to in its judgment unless those documents conclusively prove the case of the appellant (*Abdul Rashid J.*) PITAM CHAND v KALI U SINGH 42 P L R 94

## O P CODE (1908) S 100

case upon the merits (*Rowland J.*) BHAGWAT SINGH v UJAGIR SINGH A I R. 1940 Pat 33

—S 100—Malicious prosecution—Existence or absence of reasonable and probable cause—If a question of law

In a case of malicious prosecution the presence or absence of reasonable and probable cause is a question relating to the state of the mind of the accuser and has to be inferred from the facts of each particular case. The question whether the inference from certain facts is correct or not is a question of law (*Radhakrishna J.*) FATEH CHAND v KUNJ BEHARI LAL

15 Luck 404 = 12 R O 302 = 186 I C 293 =

1940 O L R 113 = 1940 O A 195 =

1940 O W N 201 = 1940 A W R (O C) 108 =

A I R 1940 Ondh 320

—S 100—Misreading of document—If ground for second appeal

Misconstruction of a document which is not a docu

on evidence and not on surmises and conjectures Any

—S 100—Mixed question of fact and law—Appli

question is a

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2 R L 428 =

1940 Lsh 35

—S 100—Finding of fact—Question of consid

—S 100—Mixed question of fact and law—Que

tion of limitation—Interference in second appeal—

ale Court differing from trial Court

regarding limitation is a mixed question of

and it is liable to reconsideration by the

—S 100—Findings of fact—Tena

nature

The findings of fact of the first appellate Court with

regard to a tenancy are binding in second appeal but

not its conclusion (*George Rankin*)

190 I C 342 =

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—S 100—Finding of fact—When final

In a case in which the findings of fact of the lower

appellate Court are to be final it is necessary that the

—S 100—New plea—Question of law—If can

be raised for the first time in second appeal See 1939 D g

Col 200 ABDUL HAFIZ v MANOHAR IAL

14 Luck 678

100—New point—Plea of estoppel—If can be

ied

of estoppel which was not made up in the

Court—Error in procedure—Effect of

It does not follow that in second ap

error of procedure will always lead to

of the lower Appellate Court's decision.

be an error affecting the merits of the c

under S 100, C. P. Code High Court can inter

ferre on the ground of any substantial error or

defect in the procedure which may possibly have

produced error or defect in the decision of the

—S 100—Powers of High Court—Remand—

When necessary—High Court's power to set aside find

ings of lower Courts and to substitute its own findings

of fact

## C P. CODE (1908), S 100

Though the High Court, in second appeal is not a Court of fact and cannot properly set aside the findings of fact arrived at by the Courts below and substitute its own findings upon an examination of the evidence it must at the same time avoid a remand if possible. When there are sufficient findings of facts in the decisions of the Courts below to justify a decision of the case finally after making the proper legal inferences, a remand is unnecessary (*Agarwala and Meredith JJ*)  
**HARIHAR PRASAD SINGH v. JANAK DULARI KUER**  
 21 Pat LT 873

—S 100—Question of fact—Acceptance of gift by donee.

The question whether a donee had accepted a gift in the lifetime of the donor is not purely a question of fact but would involve evidence as to whether there was not acceptance, and it cannot be considered in second appeal when it is a question of fact.  
**LAKSHI**

—S 100—Question of fact—Inference from documents—Documents containing explicit words and requiring no construction—Second appeal—Competency

## Dedication

Whether instances of burial proved in any particular cases are adequate in character, number and extent to justify an inference of dedication is undoubtedly a question of pure fact (*Lobo J C and Sullivan, JJ*)  
**DOST MOHAMED v. CHAINPATA**

11 L (1940)

12 B S 1

—S 100—Question of fact

Negligence is a question of fact of the lower Appellate Court binding in second appeal.  
**RAMIDAS TOPANDAS v. SUT**

—S 100—Question of caution under S 41, Transfer of Property Act as to—Finding on—If final

The question whether a transferee has taken reasonable care and caution within the meaning of S 41, Transfer of Property Act is a question of fact.

—S 100—Question of law—Construction of document

The construction of a document of title which is the foundation of the suit, is a question of law which can be raised in second appeal (*Tek Chand and Bhaidi, JJ*)  
**OM PARKASH v. MUKHTAR AHMAD**  
 42 P.L.R. 660—A.I.R. 1940 Lah 486

—S 100—Question of law—Construction of receipt

## C P CODE (1908), S 102.

The true construction of a receipt upon which the whole matter is in issue between the parties depends, is not a question of fact, but is a question of law.  
*(Braund, J)* **JAINTI PRASAD v. NANAK CHAND**  
 190 I.O. 604—1940 A.W.R. (H.O.) 372—  
 A.I.R. 1940 All 441.

—S 100—Question of law—Inference from findings of fact

The legal inference to be drawn from the findings of fact is a question of law (*Davis, J C and Weston, J*)  
**TEKCHAND NICHALDAS v. RIJHUMAL VIRUMAL**  
 190 I.O. 271—13 B.S. 59—A.I.R. 1940 Sind 138

—S 100—Question of law—Malicious prosecution—Suit for damages—Absence of reasonable and probable cause

read with O 41, R 23  
 or—Dismissal by trial court—Want of registration of Bengal Land Registration Act—If can

be taken into account for decreeing suit  
 A Court of second appeal is entitled to take into consideration the effect of the registration of a property.

6 B.R. 229—A.I.R. 1940 Pat 300

—S 100—Second appeal—Question of costs—Competency—Interference—Principles

It cannot be said that no second appeal lies against an order for costs. Where in the Courts below wrong

—Summary rejection of second appeal—If

wherefore whom a second appeal is filed is entitled to reject it if in its opinion the case is not covered by the provisions of S 100 C.P. Code (*Sathe, J M*) **MEWA LAL v. PARAGA** 1940 O.W.N. 550—  
 1910 O.A. 643—1940 A.W.R. (B.R.) 113 (2).

—S 102—Applicability—Order in execution under S 47—Second appeal by surety for judgment-debtor—Bar of Sec 1939 Dig. Col. 203 **KHANGHARD MAYARAM v. PESSUMAL LAKHUMAL** 185 I.O. 486—  
 12 B.S. 165,



## C P CODE (1908), S 100

- GADMAL NATHMAL ILE (1940) Bom 505=  
190 IC 420=13 R.B 109=42 Bom L.E. 511=  
A I.R. 1940 Bom 263  
—S 100—Finding of fact—Interference—Lower  
Court omitting to consider all available evidence See  
1939 Dig Col 199 GORIND RAM v KAJU RAM.  
185 IC 652=12 R.L 310=42 P.L.R. 232  
—S 100—Finding of fact—Interference—Lower

judgment, unless those documents conclusively prove the case of the appellant (*Abdul Rashid, J.*) PITAM CHAND v KALU SINGH 42 P.L.R. 94

—S 100—Finding of fact—  
justified

It is true that a finding of fact appellate Court is binding on the erroneous it might be But this that the finding is honest that it the facts of the case uninfluence considerations, that it is the result tion of the material on the record on evidence and not on surmises and conjectures Any

—S 100—Finding of fact—Question of consideration in pre-emption suit

—S 100—Findings of fact—Tenancy—Binding nature

The findings of fact of the first appellate Court with regard to a tenancy are binding in second appeal but not its conclusions as to their effect in law (*Sir George Rankin*) SHANKAR RAO v SAMBHU NATHU 190 IC 342=45 C.W.N. 57=1940 O.L.R. 608=  
A I.R. 1940 P.C. 192 (P.C.)

—S 100—Finding of fact—When final

J) BHIM SINGH v RAMJI 42 P.L.R. 180

—S 100—Interference—Power of High

## C P CODE (1908), S 100

case upon the merits (*Rowland, J.*) BHAGWAN SINGH v UJAGER SINGH A.I.R. 1940 Pat. 33

—S 100—Malicious prosecution—Existence or absence of reasonable and probable cause—If a question of law

In a case of malicious prosecution the prevece or absence of reasonable and probable cause is a question relating to the state of the mind of the accuser and has

—S 100—Misreading of document—If ground for second appeal

Misconstruction of a document which is not a docu

—S 100—Misreading of document—If ground for second appeal

Misconstruction of a document which is not a docu

—S 100—Mixed question of fact and law—Que

tion of

by the

Court

who had an opportunity of hearing the witnesses in

person

lower

(*M*)

fact

A plea raising a question of fact which requires in

vestigation cannot be allowed to be raised in second

appeal for the first time (*Manohar Lal and Chatterji,*

J)) KAPILSHWAR MISHRA v SANTI NAYAK,

21 Pat L.T. 894

—S 100—New plea—Question of law—If can be

entertained

A plea of estoppel which was not made up in the

## C P CODE (1908), S 100

Though the High Court, in second appeal is not a

When there are sufficient findings of facts in the decisions of the Courts below to justify a decision of the case finally after making the proper legal inferences, a remand is unnecessary (*Agarwala and Meredith JJ*)

HARIHAR PRASAD SINGH v JANAK DULARI KUER  
21 Pat LT 873

—S 100—Question of fact—Acceptance of gift by donee

The question whether a donee had accepted a gift in the lifetime of the donor is not purely a but would involve evidence as to whether there was not acceptance, and it cannot be considered in second appeal when it was

—S 100—Question of fact—Inference from documents

Whether instances of burial proved in any particular cases are adequate in character, number and extent to justify an inference of dedication is undoubtedly a question of pure fact (*Lobo J C and Sullivan J*)  
DOST MOHAMED v CHAINRAI  
ILR (1940) Kan 171-187 TC 007

12 RS 233

—S 100—Question of fact  
Negligence is a question of fact

—S 100—Question of fact  
caution under S 41, Transfer of Property Act—Finding on—If final

The question whether a transferee took reasonable care and caution within the meaning of the Transfer of Property Act is one of the lower appellate Court

appeal (*Agarwala and Kowland, JJ*) BANSIDHAR SETH v GOPI LAL SETH  
186 IC 793-12 RP 527-AIR 1910 Pat 480

—S 100—Question of law—Construction of document

The construction of a document of title which is the foundation of the suit, is a question of law which can be raised in second appeal (*Tek Chand and Bhide, JJ*)  
OM PARKASH v MUKHTAR AHMAD  
42 PLR 660-AIR 1910 Lah 485

—S 100—Question of law—Construction of receipt

## C P CODE (1908), S 102

The true construction of a receipt upon which the act depends, is between the parties depends, is act but is a question of law.

RI PRASAD v NANAK CHAND  
(1901) 601-1910 AWR (HC) 372-AIR 1910 All 441

—S 100—Question of law—Inference from findings of fact

—S 100—Question of law—Malicious prosecution—Suit for damages—Absence of reasonable and probable cause

3100—Scope—If to be read with O 41, R 23 for rent by proprietor—Dismissed by trial and appellate Court for want of registration of name under S 78 Bengal Land Registration Act—Registration pending second appeal—If can be taken into account for decreeing suit

like into propriety Act, to decree issued by X, C P is wide to consider S 78 applies to JJ) 638-666

—S 100—Second appeal—Question of costs—Competency—Interference—Principles

It cannot be said that no second appeal lies against an order for costs. Where in the Courts below wrong principle have been applied or there is some error in

—S 100—Summary rejection of second appeal—If justified

A Court before whom a second appeal is filed is entitled to reject it, if in its opinion the case is not covered by the provisions of S 100, C P Code (*Seth, JJ*) MEWA LAL v PARAGA 1910 O W N 550-1910 O A 645-1910 AWR (BE) 113 (2)

—S 102—Applicability—Order in execution under S 47—Second appeal by surety for judgment-debtor—Bar of Sec 1939 Dg Col 203 KHANCHAND MAYARAM v PESSUMAL LAKHUMAL 185 IC 486-12 RS 1

## G. P. CODE (1908), S. 102

—S. 102—Applicability—Suit of small cause nature—Co sharer—Suit for rent against tenant—Dispute as to share of plaintiff in land—Other co-sharers made parties to suit—Decision in—Second

as parties to the suit, the suit in substance, so far as the co-sharers are concerned, is one for a declaration of the plaintiff's share. The suit is not of a small cause nature. Code, so as to bar a second appeal. *Rao, J.*) VIZIA RAMA MURTI MURTI 1940 M W N 60=

—S 102—Suit of small cause nature—Suit to recover dues from—See 1939 Dig Col 20 TRIMBAK SHRIDAR.

—S 102—Suit of small cause nature—Execution of decree—Second appeal if lies.

In the case of a suit of the nature of Small Causes no second appeal lies under S 102, C P Code, if the appeal was against the decision in the

—S. 102—Suit of Small cause nature—Suit for value of *dhani* leaves cut from plaintiff's land—No mention of theft or trespass—Second appeal. See

MARWARI v. KEDARNATH HIMAT SINGHA.  
6 B R 144=185 I C 273=12 R P. 336

—S 101 (1) (f) and (2)—Application under Sch. II, para. 20—Decree passed on award without

## G. P. CODE (1908), S. 105.

—S. 104 (1) (f) and (2)—Order filing award—Validity of reference challenged—Second appeal—If competent.

The prohibition against a second appeal from an order filing or refusing to file an award contained in S. 104 (2) C. P. Code applies to an appeal from an award and not in excess of it. Such an appeal will be allowed if followed by judgment and decree—Appeal—Competency

of—filing followed by judgment and decree—Appeal—Competency

S. 104 (1) C. P. Code applies to an appeal from an award and not in excess of it. Such an appeal will be allowed if followed by judgment and decree—Appeal—Competency

award and not in excess of it. Such an appeal will be allowed if followed by judgment and decree—Appeal—Competency

ON L J. 393= A I R 1940 Nag 386.

—S 104 (2)—Scope—If affects Cl 15 of the Let

—S. 105 (1)—Appeal from ex parte decree—Matters that can be raised in.

In an appeal from an ex parte decree S 105 (1). C.

ing the decy-  
vary issue in  
High Court in  
Appeal to  
ctness of—If

ample in the  
of a scheme  
ndant trustee

pleaded, *inter alia*, that the Court had no power to frame a scheme. A preliminary issue was framed on this point and the Court found on it in favour of the plaintiff. The defendant applied to the High Court in

## C P CODE (1908), S 105.

AYYANGAR v RAMANUJA JEER SWAMIGAL.

I.L.R. (1910) Mad 801—51 L.W. 727—  
1910 M.W.N. 575—A.L.R. 1910 Mad. 756—

—S 105 (1) and O 4

S (1) of S 105—Right

Order of refusal to extend

passing of final decree See 1939 Dig Col. 205 SYED

ISHAK v KUNJIBHARI SINGH 188 I.C. 273—

12 R.N. 324—A.L.R. 1910 Nag. 104

—S 107 and O 41, R 27—Additional evidence in  
appeal—Filling up of gaps in evidence—Evidence of  
attesting witness—Production in second appeal—If  
permissible

The provisions of S 107 are abrogated by O 41

long before (Zia ul Hasan, J) KALI CHARAN v.  
SURAJ KALI 1910 O.A. 1029—

1910 A.W.R. (O.C.) 446—

—Ss 109 and 110—Applic

appeal—Leave asked for purpose of

for first time—If to be granted

Leave to appeal to His Majesty in Council cannot be

the purpose of

was not raised

ing either in

an application

re encouraged

J.J. MUHAM

A KOMARAJU

52 L.W. 463—

A.L.R. 1910 Mad 810—

—S 109 (a)—Final order—

Decision of one issue—If makes

Dig Col 206 RAMANATHAN C

APPA CHETTIAR. 188 L.C.

—S 109 (a)—Final order—

appealable See 1939 Dig Col 206

applicable

Under S 109 (r), C.P. Code a case can be certified  
to be a fit one for appeal to His Majesty in Council only  
when it is of considerable importance and the principle  
when finally decided by their Lordships of the Privy  
the people who  
at also to the  
questions for  
vote is a public  
and whether the

## C P CODE (1908), S 114.

defendants have established adverse possession of the  
mosque, cannot be brought within the scope of the  
above principles (Thomas, C.J. and Yoke, J.)

—S 109 (c)—Question of importance—Test See

1939 Dig Col 207 HARI SARAN DAS v HARI

KISHAN DAS. 14 Luck 675

—S 109 (c)—Scope—Form of ritual in important

public temple—Disputes between two religious sects—

If of public and private importance—If certificate to be

granted See 1939 Dig. Col 207. THIRUVENGADA

No state can be granted unless  
there is a substantial question of law involved (Pand  
rang Rao and Venkataramma Rao JJ) SOKKA

—S 110—Decree of affirmance—High Court, on

appeal increasing amount of compensation in land acqui

sition matter—If affirming decree See 1939 Dig Col

208 NARAIN KHANNA v SECRETARY OF STATE

185 I.C. 513—12 R.A. 334

—S 110—Decree of affirmance—Rejection of

appeal owing to insufficiency of court fee

An order of the High Court rejecting an appeal on

account of insufficiency of court fee is one affirming

See 1938 Dig,

2H

(1910) Nag 29

of agreement

as to—Deci

y worth over

e See 1939

v MOUNA

12 R.M. 739

it—If can be

enhanced by plaintiff appellant See 1939 Dig Col 203

SRI KRISHNA MOHAN JI v PURSHOTTAM DAS

185 I.C. 620—12 R.A. 346.

—S 114—Applicability—Proceedings under S 66,

Income-tax Act—Application for review of Judgment—

Maintainability See INCOME-TAX ACT S 66 A

(1910) I.T.R. 412

—Ss 114 and O 47, R. 1—Applicability—See

appeal—Application for review on ground of disc

of material evidence—Maintainability.

C P CODE (1908) S 115

C P CODE (1908), S 115

Burden of proof  
 Case decided  
 Construction of document  
 Court fee  
 Erroneous decision  
 Error of law  
 Failure to exercise jurisdiction  
 Illegality or material irregularity  
 Interference  
 Interlocutory order  
 Jurisdiction  
 Leave to sue  
 Limitation  
 Material irregularity  
 Miscellaneous proceedings  
 New plea  
 Order returning appeal  
 Order under O 41 R 6  
 Other remedy  
 Powers of High Court  
 Remand Order  
 Scope  
 Subordinate Court  
 Technical defect  
 U P Encumbered Estates Act

—Ss 115 and 152—Amendment of *de ree*—If *revisable*

Application under S 115 C P Code are entertain-  
 able against orders of amendment of decrees made  
 under S 152 C P Code (*Yorke J*) MUJAWIR

—S 115—Arbitration—Interference—*Wrong*  
*view as to what constitutes misconduct—If a ground*

The scope of S 115, C P Code is very limited and  
 the High Court cannot interfere in revision merely  
 because the lower Court has taken a mistaken view as to—

sion—Competency—Interference See C P CODE  
 SCH II, PARA 13 I.L.R. (1940) Kar 34

—S 115—Award—Order passing decree in terms  
 of—If *revisable*

No revision is maintainable against an order passing a  
 decree in terms of an award (*Zia ul Hasan and Yorke*  
*JJ*)

—S 115—Burden of proof—Mistake as to—Revi-  
 sion See 1939 Dg Col 210 SHIB LAL v GOBINDI  
 185 I C 613=12 R L 305

—S 115—Case—If includes interlocutory orders  
 See 1938 Dg, Col 265 KRISHNA KUMAR v  
 RADHELAL I.L.R. (1940) Nag 463

—S 115—Case decided—Decision on one issue  
 —Issue in suit—Revision—Competency—Interference  
 The High Court will not ordinarily entertain revision

ZAUR RAHMAN v UDIT SINGH

185 I C 135=

—B 115—Applicability—Application  
 Court under S 476 Cr P Code in *revis*  
*committed in civil proceeding—Procedure*  
*Revision—If governed by S 115 C P Code*  
 Cr P Code

A civil Court does not cease to be a civil Court when  
 it is considering an application made to it under S 476

C P Code (*Rachpal Singh and Ismail JJ*) MOHAM

—B 115—Case decided—Matter still under in  
 vestigation and not finally decided by lower Court—  
 Revision—Interference

## C. P. CODE (1908), S 115

Where the matter under revision is still under investi-

## O P CODE (1908), S 115

acted illegally and its decision may be revised (*Ba U. J.*) *KO SAN PAW v KO PO YI*

187 I O 350-12 R R 315-

A I R 1940 Rang 75

—S 115—Error of law—Misinterpretation of limitation law—If ground of revision See 1939 Dig. Col 212 *RAMASWAMI CHETTIAR v MEYYPAN SERVAL*

188 I O 187-12 R M 810

—S 115 and O 21 R 88—Failure to exercise jurisdiction vested by law—Misconception as to law—

wrong view of the

of O 21 R 88, C.

failed to exercise

must be interfered

MUNNALAL v

1940 N L J 453-

A I R 1940 Nag 337

—S 115—Case decided—Order refusing to stay

suit under S 10 C P Code

See 1939 Dig Col 211

RAM

—S 115 and O 6

may amount to—Rejects

array of parties—Revision

Where an amendment comes under some provision

other than O 6 R 17, C P Code, the addition

GOPILAL

See 1938

LAL

Omission

The

the dec

underst

effect c

relied

PRASAD

—S 115—Court fee—Decision as to court fee

but affecting

Power of High

The High Co

where with a decision in a case of law

favourable to the plaintiff when there is only a simple

question involved as to how much court fee the plaintiff

shall pay

raised and

the proper

fee in revision to prevent the tri

which has no jurisdiction, when

wrongly directed that Court to

which it has not got (*Wadnoor*

MIAN HUSSAIN v KALAYIGAR

52 L W 146

A I R 1940 Mad 821-

—S 115—Court fee—Order on examining and

holding plaint to be insufficiently stamped—Revision

No petition for revision is competent against

to stay

nature

LTD v

4 L R 883.

—S 115—Interlocutory order—Pendency of revision

an amendment asked for it is the duty of that court to

if

—S 115—Jurisdiction—Absence of—Grant

corrected on revision If, on the other hand, the lower Court has failed to consider the law or the facts, it has

Y. D. 1940-16

VENKAYYA v SURYANARAYANA 50 L W. 903=

A.I.R. 1940 Mad.

## C P CODE (1908), S 115

—S 115—Jurisdiction—Absence of—Order allowing withdrawal of suit under O 23, R 1 on ground of defect of substance—Revision—Power of High Court to interfere See C P CODE, O 23 R 1 (2) (a) AND (b) 42 Bom LR 143 (FB)

—S 115—Jurisdiction—*Ex parte* decree setting aside—Absence of finding as to sufficient Order—If without jurisdiction—Interference—If justified See C P CODE O 9 R 13 1910 MW

—S 115—Jurisdiction—Order directing party to amend plaint—Jurisdiction of Court to make—Revision—Interference See C

—S 115—Jurisdiction—Application for setting down agriculturists' Relief Act, re applicant not competent to sue

An order of a Court rejecting the Madras Agriculturists' Relief Act as incompetent that the applicant is not competent to apply for the benefits of the Act is in effect a refusal to exercise the jurisdiction invoked by the applicant and the High Court will interfere in such a case under S 115 C P Code RAMAM

—S 115—Jurisdiction—Order erroneously rejecting reference under S 18 of Land Acquisition Act as incompetent See 1939 Dig, Col 215 BENGAL B

—S 115—Jurisdiction—Dig, Col

—S 115—Jurisdiction—Order on application—Revision if lies and when can succeed—Decision that there was no cause of action—Revision, if lies

There could be a revision against application for leave to sue *in forma pauperis* to succeed there must be an exercise of jurisdiction vested by law or a failure to exercise jurisdiction vested by law or an exercise of jurisdiction with material irregularity, which depends on the facts of each case Where a Court has refused to grant leave to sue *in forma pauperis* on the ground of lack of cause of action it is an exercise of jurisdiction and would be subject to revision

—S 115—Jurisdiction—Order on application—Revision if lies and when can succeed—Decision that there was no cause of action—Revision, if lies

An order on an application for permission to sue *in forma pauperis* is not revisable by the High Court unless there has been an exercise of jurisdiction not vested in the Court

## C. P CODE (1908), S 115

186 IC 381=1910 O A 239=1910 O L R 118=AIR 1940 Oudh 148 (FB)  
—S 115—Limitation—Filing of revision—Practice of Rangoon High Court  
It is a rule of practice in Rangoon High Court that

—S 115—Material irregularity—Application for

to the Judge that the report of the Mansiff is wrong (Fest Ali.) RAM JANAM MAHTO v BENDHYA-CHAL KUER 6 BR 300=186 IC 170=12 RP 455=AIR 1910 Pat 263

Material irregularity—Discretionary issue commission under O 26, R 4, living more than 200 miles from Court—Interference

Where a witness cited by a party to the suit is a

ness is an important witness though he may be the husband of a party to the suit If the Court in such a case refuse a commission, it acts with material irregularity will interfere in revision *Igarwala and Rowland, IEBB v HAJI DAWOOD* 12 RP 112=6 BR 840=AIR 1910 Pat 437

—S 115—Material irregularity—Misreading evidence See 1939 Dig, Col 215 DWARIKA v BHAGAWATI 186 IC 530=12 BR 270

—S 115—Material irregularity—Omission to

—S 115—Material irregularity—Reference to arbitration by next friend of minor plaintiff—Failure to conform to O 32 R 7—Revision—Interference

A Court which does not follow the provisions of matter of a reference to a minor plaintiff external irregularity, and therefore in revision under the question of jurisdiction below (*Datta J C IR v RAMSING TAKHAT* 186 IC 530=12 BR 270=AIR 1910 Sind 178

O P CODE (1908), S 115

O P CODE (1908), S 115

regularity Where an ordinary Civil Court finds that its  
jurisdiction is not affected by the order of revision  
temporarily Encumbered  
proceed

les from the order sought to be revised So long as a  
by way of that  
dge and  
ask the

—S  
order and  
Revision  
ACT S

—S  
It is not the practice to interfere in  
point not raised or argued in the lower Court  
nik, J) BULAKHIDAS v MURLIDHAR

190 IC 719=1940 T

AIR 1940 N.W. 800

—S 115—Order returning appeal  
in proper Court—Revision See C P  
R 1 AND S 115

—S 115—Order under O 41 R 6  
See C P CODE O 41 R 6 (2)

—S 115—Other remedy—Appeal  
Revision—Interference

It is the practice of the High Court to refrain from  
dealing with a matter in revision where a definite  
remedy is provided to the parties in  
appeal (Fazl Ali and Meredith JJ)  
SINGH v LOHAR SINGH

6 B E 558=12 B P 646=2

—S 115—Other remedy open—K  
just available—Interference in revision—Jurisdiction  
of High Court

—S 115—Powers of High Court—Order of Sessions  
Judge in revision from order of Magistrate under

—S 115—Remand order—Revision  
An order of remand under O 41, R 23 C. P. Code,



## C P. CODE (1908), S. 144

would have occupied. The word "party" should be given a wide meaning so as to include persons who would become subsequently concerned. The fact that a party to a suit (a plaintiff) who has obtained a decree wrongly against another person prefers to get the immediate benefit of it by a sale or transfer, rather than by way of execution, in no way affects the right of the original party defendant to recover in restitution what he has paid over under pressure of the original erroneous decree. The fact that he paid of the original plaintiff is wholly to recover against the person who

—S 144—Construction—Place the parties in the position which they would have occupied but for such a decree—Meaning of

—Ss 144 and 151—D compromise—Restitution—Ink

Even if a decree is varied after contest but by a compromise the Court can allow compens. S. 144, C P Code, in the exercise of

the compromise  
JOWAI V. JINDAN

144—Limitation—Restitution—Application  
ence of order of His Majesty in Council  
TION ACT, ARTS. 181 AND 183.

44 C.W.N 438-71 C.L.J. 127.

## C. P CODE (1908), S 144.

—S 144—Mesne profits by way of restitution—Calculation—Ejectment suit against tenant—Tenant claiming occupancy right—Decree and possession by landlord—Decree reversed on appeal to Privy Council—Claim by tenant to mesne profits by way of restitution—Basis of assessment—Rent due by tenant—Deduction of—Interest.

Certain tenants who were sought to be ejected by suits

entitled to *melwaram* right, the *kudswaram* right being vested in the defendants (tenants). The tenants applied for restitution claiming mesne profits.

Held, that the tenants were entitled only to be put in the same position in which they would have been had

the mesne  
been em-  
53 (3),  
did not be

A I E 1940 Cal 260.

—S 144—Right to apply under—Decree for ejectment set aside on appeal—Only formal delivery of

## C P CODE (1908) S 145

*possession in execution—Judgment debtors if entitled to compensation*

continued throughout until the ejectment decree was upset in appeal the judgment debtors are not entitled to any compensation under S 144 C P Code (*Harper S M*) RISHWA NATH PRASAD v MAHARAJA OF BENARAS 1940 R D 330—  
1940 A W R (B R) 176 (1)

—S 145—Liability of sapardars—*Effect of attachment—Effect of*

The sapardars are not relieved of it when the attachment ceases nor have they authority to hand over the goods to the judgment request of the decree holder. The goods from the agent of the Court conditions to wit that they shall whenever the Court orders them to

100 A C 810—102 Pesh 17—A I R 1940 Pesh 29

—S 145—Surety bond—Enforcement—Procedure

Where a person has executed a bond as surety for a receiver and has become liable under the bond the order of the Court to pay up the amount due on the bond falls within the scope of S 145 and can be enforced by the Court.

C J and CHETTYAR

—A I R 1940 Rang 101—Judgment

12 B L 504  
—S 145—Surety for judgment debtor—Liability  
See 1939 D G, Col 225 CHAKKAN RAM v UDHO DAS 188 I O 172—12 R L 504

—S 145—Surety—Liability of—If ceases on dismissal of execution application against judgment debtor  
See 1939 D G, Col 225 PEOPLE'S BANK OF NORTH INDIA LTD v

—Ss 145 and 146—Effect of surety

The right to enforce a surety bond in execution is conferred by S 145, C P Code. The surety must be

*ejectment suit allotted to son of lessor (plaintiff)—Decree for ejectment—Appeal by defendant—Application by son to implead him as party in appeal—Competency*

S 146 C P Code applies only when the person claiming to take or continue a proceeding can properly be regarded as claiming under the original party who brought the action or took the proceeding. Where

## C P CODE (1908) S 148

*pending a suit for ejectment by a lessor a final partition is passed in another suit allotting the property,*

entitle him to come on record in an appeal against his father alone by the defendant in the ejectment suit from the decree therein (*Patani Sastri J*) RATNASABAPATHI PILLAI v GOPALA AIVAR

1940 M W N 876—52 L W 357—  
A I R 1940 Mad 876—(1940) 2 M L J 349.

—during pending or—Appeal by AND 11 See 2 M L J 376

—Time for deposit of of Court—Extension of BENGAL TENANCY ACT, 44 O W N 449

—S 148—Scope—Compromise decree fixing time for deposit—Power of Court to extend time on the application of one party only

When there is a decree based on an agreement between the parties an essential term of that agreement embodied in the decree cannot be changed by an act of

as an essential part of the contract the Court has no power to grant an extension of an essential part of the in the decree and not a nature (*Wadsworth J*)

MOORIANTHAKATH v MATHANKANDY VATTAK KAYIL POKKAN 1940 M W N 720—52 L W 336—  
A I R 1940 Mad 817—(1940) 2 M L J 311

—S 148—Scope—Time for payment of deficit court fee—Power of Court to extend

It is a general rule that where a party is required to

fixes the time is not intended to be final and the Court still retains control over the proceeding the Court may extend time under S 148. Whether the Court still

Held that a final order had not been passed in the

C P CODE (1908), S 144

would have occupied The word 'party' should be given a wide meaning so as to include persons who would become subsequently concerned The fact that a party to a suit (a plaintiff) who has obtained a decree wrongly against another person prefers to get the immediate benefit of it by a sale or transfer, rather than by way of execution, in no way affects the right of the original party defendant to recover in restitution what he has paid over under pressure of the original erroneous decree The fact that he paid it over to a nominee of the original plaintiff is wholly irrelevant to the right to recover against the person who that payment namely the original

J) KADIRVELU CHETTIAR v K  
1940 M W N 1255 = 52 L W 816 =  
(1940) 2 M L J 877

—S 144—Construction—'Place the parties in the position which they would have occupied but for such a decree'—Meaning of

The words "place the parties in the position which they would have occupied but for such a decree," in

—Ss 144 and 151—Decree compromise—Restitution—Inherent

Even if a decree is varied by after contest but by a compromise the Court can allow compensation S 144, C P Code in the exercise of its discretion The measure of compensation which the party in possession actually has derived by exercise of due care and diligence on which he should have surrendered possession under

—S 144—Limitation—Restitution—Application for, in consequence of order of His Majesty in Council See LIMITATION ACT, ARTS 181 AND 183  
44 C W N 438 = 71 C L J, 127.

C P CODE (1908), S 144

—S 144—Mesne profits by way of restitution—Calculation—Ejectment suit against tenant—Tenant claiming occupancy right—Decree and possession by landlord—Decree reversed on appeal to Privy Council—Claim by tenant to mesne profits by way of restitution—Basis of assessment—Rent due by tenant—Deduction of—Interest.

Certain tenants who were sought to be ejected by suits resisted the suits on the ground that they had occupancy rights The suits were decreed by the trial Court and

entitled to *mesne* right, the *kudiswar* right being vested in the defendants (tenants) The tenants applied for restitution claiming mesne profits

Held, that the tenants were entitled only to be put in the same position in which they would have been had they been enjoying the *kudiswar* right throughout the period of dispossession As occupancy rights they were entitled to the amount of the *mesne* right was repaid to the landlord as the owner

tenants were also entitled to interest on the date of the order for payment of realization  
Patanjali Sastri, J.)  
VENKATADRAYA v RAMASWAMI 52 L W 876 =  
(1940) 2 M L J 984 (F B).

—'Parties'—Meaning of—Assignee and assignor of party  
Parties mentioned in S 144, C. P. Code, claiming under them which obviously

taken to be a party to the proceedings when he has done

—S 144—Right to apply under—Decree for ejectment set aside on appeal—Only formal delivery of

## C P. CODE (1908), S 145

*possession in execution—Judgment-debtors if entitled to compensation*

Where a decree for ejectment is set aside in appeal and only formal possession had been given to the decree holder, the judgment-debtor is entitled to compensation.

1910 A W R (B R) 176 (1).

—S 145—*Liability of sapardars—Raising of attachment—Effect of*

The sapardars are not relieved of their responsibility about the property entrusted to their care by the Court when the attachment ceases nor have they authority to hand over the goods to the judgment-debtor at the request of the decree holder. The sapardars take the goods from the agent of the Court subject to certain conditions to wit that they shall produce the goods whenever the Court orders them to do so or pay its equivalent value to the Court. It follows from the contract itself that they cannot deal with the property with out first obtaining the direction of the Court (*Mir Ahmad, J*). **ABDUL HAKIM v. ALI AKBAR.** 189 I C 810=13 E Pesh 17=A I R 1940 Pesh 29

—S 145—*Surety bond—Enforcement—Procedure*

Where a person has executed a bond as surety for a receiver and has become liable under the bond, the order of the Court to pay up the amount due on the bond falls within the scope of S. 145 and can be enforced by procedure prescribed in that section (*Roberts, C. J and Dunkley, J*).

—S 1

See 1939 D

Das

—S

—Ss 145 and 146—*Effect of surety of*

## C P. CODE (1908), S 148

pending a suit for ejectment by a lessor, a final partition is passed in another suit allocating the property, the subject of the ejectment suit to the son of the lessor, it cannot be said that the son gets the property by reason of any agreement from his father and the son.

A I R 1910 Mad 876=(1910) 2 M L J 349.

—S 146—*Applicability—Mortgage during pendency of suit—Decree against mortgagor—Appeal by mortgagee—Competency—O 22, Rr. 10 AND 11 See SUCCESSION ACT, S 96* (1910) 2 M L J 376.

—S 146—*Power of Court under—Suit by benami-dar—Dismissal—Appeal by real owner—Permissibility. See 1939 Dig. Col. 226, SIVASWAMI CHETTIAR v. MARUDAIYA GOUNDAN* 186 I C 632=12 E M 660=A I R, 1940 Mad 16.

—S 148—*Applicability—Time for deposit of decretal amount fixed in order of Court—Extension of—Jurisdiction of Court See BENGAL TENANCY ACT, S 174 (3) (b)* 44 C W N. 449.

—S 148—*Scope—Compromise decree fixing time for deposit—Power of Court to extend time on the application of one party only.*

When there is a decree based on an agreement between the parties, an essential term of that agreement embodied in the decree cannot be changed by an act of the Court on the application of only one of the parties but

tract, the Court has no right to grant, an extension of an essential part of the decree in the decree and not a variation. (*Wadsworth, J.*)

*v* MATHANKANDY VATTAK-340 M W N 720=52 L W. 336=1 Mad 817=(1910) 2 M L J. 311.

*pe—Time for payment of deficit*

*—Power of Court to extend.*

general rule that where a party is required to thing under a decree and time limit is prescribed

fixes the time is not intended to be final and the Court

## C P CODE (1908), S 149

—S 149 and O 33—Discretion of Court—Application to sue in forma pauperis found mala fide—Extension of time

Where an application to sue in forma pauperis is found to be mala fide the Court in the exercise of its discretion is justified in refusing to grant extension of time under S 149 (*Young, C J and Sale, J*) DT OFFICIAL RECEIVER, AMRITSAR v SOHAN LAL RAMJI DASS 42 P L R 684 = A I R 1940 Lab 446

—S 149 and O 7 R 11—Relative scope of

The provision in the Code which really enables a Court to grant time to make good a deficiency in Court fee stamp on the plaint is not R 11 of O 7, but S 149, C P Code, O 7 the granting of Court fee stamp disabling one time lies in S 14 of O 7, S 149 g

—S 149—Scope—Grant of time for payment of deficit Court-fee after limitation—Effect of

Whatever the reasons for the Courts granting time by limita

l been pre date of its Rahman,

J J) VENUGOPAL PILLAI v THIRUGANAVALLI AMMAL 1940 M W N 801 = 52 L W 833 = A I R 1940 Mad 934 = (1940) 2 M L J 427

—S 151

Appeal  
Applicability  
Application under  
Consent decree  
Error due to negligence not slip  
Inherent powers  
Other remedy open.  
Remand  
Restitution  
Scope  
Stay of suit

—S 151—Appeal See 1939 Dig, Col 228

Appeal from amended decree—Competency See 1939 Dig, C

HAL.

S. 15  
other remedy under the law is  
or other is entitled to rel of In

## C P CODE (1908), S 151

II, Chap IX  
AM KHELAWAN  
19 Pat 169 =  
R P 371 (F B)

—S 151—Application under—Modification of scheme—Maintainability See C P CODE, SS 92 AND 151 1940 O A 582

—S 151—Consent decree—Setting aside of—Inherent jurisdiction See 1939 Dig, Col 233 SURESH CHANDRA SEN v JOGESH CHANDRA SEN 186 I C 276 = 12 E C 462

—Ss 151 and 152—Error not due to slip but due to negligence of party—Amendment of decree, if justifi

of the opinion that the error from any accidental slip or from the negligence of the per for the High Court to error as would justify an ere it cannot be amended

nder S 152 it could neither be amended under S 151 Zia u-Hasan and Yorke J J) SHEO NARAIN v

ACHHMAN PRASAD 186 I C 667 = 12 E O 321 = 1940 O W N 213 = 1940 O A 207 = 1940 O L R 138 = 1940 A W E (C C) 116 = A I R 1940 Oudh 298

—S 151—Inherent powers—Exercise of—Applicant allowing his remedy to be time-barred See BHOPAL C P CODE, S 134 190 I C 174

—S 151—Inherent powers—Exercise of—Conditions—Ends of justice—Test of See 1939 Dig, Col 230 RAM KHELAWAN SINGH v MONI LAL SAHU 19 Pat 159 = 12 E P 371 = 6 B R 184 = 185 I C 480 (F B).

—S 151—Inherent powers—Exercise of—Existence of other remedy—If a bar

The proposition that where an alternative remedy is provided the Court is precluded from exercising its inherent jurisdiction under S 151, C P Code, is too wide and does not take into account cases of a special and exceptional character which may demand the exercise of the equitable jurisdiction in the ends of justice to correct palpable mischiefs. There is no reason to limit the powers of the Court in cases where the Court is moved to correct its own mistake and wants to afford redress to the party who has been made to suffer for such mistake (*Ghulam Hasan J*) BADRI PRASAD v AMBIKA PEKSHAD 1940 A W E (C C) 457 = 1940 O W N 1086 = 1940 O A 1040 Inherent power—Exercise of—Limits O 21, R 48 AND SS 73 AND 151 1940 Rang L R 421

Inherent power—Limits of "could be brought under S 115, C P old not be used to set aside an order against which no appeal or revision ) GHANASHYAM PRASAD v VISHWA 1940 N L J 93

S 151—Inherent power—Limits of—Decree for dissolution—Setting aside at instance of arly

## C. P. CODE (1908), S. 151.

185 I.C. 884=1940 O.A. 140=1940 O.L.R. 71=  
1939 O.W.N. 139=A.I.R. 1940 Oudh 279.

—S. 151—Inherent powers—Order for interim maintenance—Power of Court to award—Suit for possession or in the alternative for possession—Plea that properties are self-acquisitions—Order for interim maintenance—If justified

A Court has no inherent power under S. 151, C. P. Code, to pass an interim order of maintenance. Plaintiff brought a suit against his father and brother for recovery of certain properties which he said were allotted to him under an agreement, and in the alternative he

mitted to be the plaintiff's

Held, that the order was not justified and that the plaintiff was not entitled to anything more than an amount in proportion to the property admittedly belong

—S. 151—Inherent powers—Refund of money—Powers of Court—Attachment of wrong property in execution—Own

sale—Applic.

See C. P. Code

—S. 151

As long as

right to invoke

KARIMA v.

—S. 1

S. 289, U.

S. 151, if pe

AND C. P. C.

—S. 151—Remand—Power to—Resort to inherent power, when not justified. See C. P. CODE, O. 41, R. 23 AND S. 151—INHERENT POWER.

1940 N.L.J. 350.

—Ss. 151, 144 and 47—Restitution—Order confirming sale set aside—Application by auction purchaser

## C. P. CODE (1908), S. 152

GANESH DATTA.

189 I.C. 683=13 R.L. 85=  
A.I.R. 1940 Lah. 69.

—S. 151—Restoration—Power—Dismissal for default. See C. P. CODE, O. 9, R. 9 AND S. 151.

1940 O.W.N. 1086

—S. 151—Scope of.

S. 151, C. P. Code provides only for an extraordinary procedure and action under it is not in any sense obligatory. The section could only be invoked where no other remedy is possible. It does not confer any substantive rights on parties but is mainly meant to get over difficulties arising from rules of procedure, which

—S. 151—Scope of—'Ends of justice' or 'abuse of the process of the Court'—Construction.

Per Blagden, J.—S. 151 does not empower the Court to make any order which the particular individuals who

empowers the Court to make "necessary orders," and no other orders (Roberts, C.J., Dunkley and Blagden, JJ.)

1940 M.W.N. 8/b=b2 L.W. 3b/=  
A.I.R. 1940 Mad. 876=(1940) 2 M.L.J. 349

—S. 151—Stay of suit

S. 151, C. P. Code, cannot be invoked to stay a suit which cannot be legally stayed under S. 10, C. P. Code, (Din Mahomed, J.) LAKSHMI INSURANCE CO.

LTD. v. B. K. KAULA. A.I.R. 1940 Lah. 85

—Plea of 'if can be

stertain a

importance

r stay of

question

es on for

ams, J.)

BRAHMI

'al. 487=

'C' N. 460

venience.

BRAHIM

Accidental omission.

Amendment of decree after 12 years.

Application for amendment

Delay.

C P CODE (1908), S 152

Jurisdiction  
Scope

C P CODE (1908), O 1, R. 8

appeal is available But in very special circumstances if there is a clear error relating to jurisdiction it may at

—S 152—Application for amendment of decree—  
If entertainable in absence of opposite party

190 I C 593=42 P L R 263=A I R 1940 Lah 182  
—O 1 R 3 & O 2 r 3—Suit on mortgage by

19 R O 133=1940 O W N 807=1940 O L R 568=  
1940 A W R (C O) 366=1940 O A 766.

—O 1, R 8—Applicability—Suit on behalf of  
inchoat

appellate Court

When an appeal abates so far as one of the respondents is concerned but is decided on the merits so far as the other respondents are concerned, a subsequent application for amendment of the decree under S 152 C P Code, at the instance of the legal representatives of the deceased respondent must be made in the appellate Court and not in the trial Court. The power of amendment must be limited to the appellate Court when an appeal has abated only in part and a decree on the merits has been given as against the other respondents, because in such a case there is a decree capable

ested in the suit, the suit is liable to be dismissed (*Davis, J C and Lobo J*) NARUMAL MULCHAND v RAIS HASHIM I L R (1940) Kar 190=187 I C 883=12 R S 263=A I R 1940 Sind 63

—O 1, R 8—Parties to suit—Who are not See 1939 Dig, Col 234 FAZAL RAHIM KHAN v HUSSAINA I L R (1940) Lah 199=188 I C 189=12 R L 507=42 P L R 731.

—O 1, R 8—Representative suit—Death of some of representatives—Procedure

Two of the defendants out of the twelve representatives appointed under O 1 R 8 died *pendente lite*

a correct decree to be passed The powers given under defendant from being vexed and molested by other  
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exist  
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ervice  
C P  
ie the

C P CODE (1908), O 1, R 8

C P CODE (1908), O 1 R 10

the defendant in that suit (*Hamilton, J*) SURAJrepresented will not be affected one way or the other.  
v PROMODE RANJAN.

44 O W N 1029

-Frame of suit by plain  
r declaration of right of  
presentative capacity—  
defendant for damages—O 1, R 8—Scope and effect of—If creates new  
right of suit—If over ridden by S 91—Village path  
234 FAZAL RAHIM KHAN v MUSSAIVA  
I.L.R. (1910) Lah 199=188 I C 189=  
12 B L 507=42 P L R 731—O 1, R 8—Scope of See 1939 Dig. Col  
19 Pat 208—O 1 R 8—Scope of—Suit in their own right by  
some members of a community—If affected See 1939—O 1 R 9—Applicability to mortgage suits See  
C P CODE, O 34 R 1

1940 O A 191=

1940 O W N 209

—O 1 R 9—Joinder of parties—Power of Court  
—Party in whose favour joinder is necessary, refusing  
to allow addition

Though a Court has a power to join a party under

—O 1, R 8—Suit against a member of unregis  
tered body—Procedure laid down by R. 8 not followed—  
Binding nature of decree

6 B R 416=20 Pat.L T. 889=

A I R 1940 Pat 145

—O 1 R 9—Scope—Suit by one of two persons

followed If that procedure is not followed, the result  
who are notthe root of the case  
members of an associa  
although they were nemay be that a Court would in certain exceptional cases  
refrain from passing a decree in favour of a plaintiff  
when it finds that all the parties interested in the—O 1 R 8—Suit  
public right of way over  
public not impleaded—  
opposing plaintiff's right—Suit is badA suit for a declaration that there is no public right  
of way over the lands in suit belonging to the plaintiff is  
not bad although members of the public have not been  
impleaded in the way contemplated by O. 1, R. 8, C P—O 1 R. 10 and O 41, R 23—Addition of  
parties—Partition action—Necessary parties not im  
pleaded—Procedure to be followed by appellate CourtWhere the Appellate Court is of opinion  
certain person is a necessary party and ought



C P CODE (1908), O 1, R 10

C P. CODE (1908), O 2, R 2.

AIR 1940 All 399  
O 1, R 10—Discretion of court—Addition of party to suit representative of person against whom has abated

YANA v. GURRAMMA

52 L W 828

It is open to the Judge in his discretion under R. 10 to add as a party to the suit the representative of a person against whom the suit has abated for purpose of giving effect to the rights of the parties (Sir George Rankin) MAHOMEDALLY TYEBALLY v SAFIABAI

rent by thicadar against tenant—Application by another to be impleaded as party as being the present thicadar

AIR 1940 P.  
O 1, R 10—Necessary parties added defendants instead of as co plaintiffs—Grant of private r  
COOVE

been enacted for the of suits In a suit for tenants, the defendants lease had expired long was the present thicadar rent. The petitioner, as a witness to prove

under O 1, R 10—Limits—Suit by plaintiff as minor—Bona fide mistake as to age—Amendment—Applicability of S 22, Limitation Act

that he was the present thicadar applied to be added as an intervenor, but his application was rejected

Held, that if it was important to decide who should pay rent, it might be equally important to decide who the petitioner should therefore (Varma, J) NAGENDRA 21 Pat L T 329

thereto in good faith under O 1 R 10, C.P. Code, the

O 1, R 10 (2)—Partition suit—Mortgagee of

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O 1, R 10—Procedure—Application by persons to be impleaded as additional plaintiffs—Duty of Court—Dismissal of application on dismissal of suit—Priority of.

O 2 Br 1 and 3—Joinder of causes of action—Improper sale under S 69 T. P. Act—Claims by mortgagor against mortgagee in respect of amount of mortgage and against purchaser on ground of fraud—If

improper or irregular under S 69, T. P. Act—Mortgagor in the damages against the mortgagee who has brought the property to sale. If

miss the application on the dismissal of the suit itself.

mortgagee who has brought the property to sale. If

accident

C P CODE (1908), O 2, R 2

O P CODE (1908), O 2, R 2

accidental omission two plots were on respondent's claim To remedy this or

second

and not as regards any additional rel  
were therefore barred by O 2 R 2

*Meredith JJ*) RAM PRASAD SINGH  
PANDAY

—O 2 R 2—Applicability—Test—Cause of action—Three sale deeds executed by same person in favour of same vendees on same day for different considerations—Successive suits to set aside on ground of want of consideration and undue influence—If barred See 1939 Dig Col 237 SHEOKUMAR SINGH v BECHAN SINGH AIR 1940 Pat 76

—O 2 R 2—Applicability—Transaction giving rise to two different claims based on different causes of action—Separate suits—Bar of—Illegal distress by mamlatdar—Suit for recovery of amount levied and interest—Subsequent suit for compensation and damages—If barred See 1939 Dg, Col 238 SHRIDHAR MAHADEO v GODULAL JETHMAL ILE (1939) B 12 R B 343

—O 2 R 2—Bar of fresh right—Mortgagee on sitting to gaged property in suit on security of that portion by way under S 51, Provincial Insolve

A bar of fresh suit which creates does not extinguish the

—O 2, R 2—Scope—If controls S 130, T. P Act See T P. Act, Ss 6 AND 130 18 Pat. 839.

—O 2 R 2—Scope—If subject to Expt V to S 51—Partition suit—Failure to obtain same profits from date of suit until delivery—Fresh suit for recovery of mesne profits—If barred See 1939 Dig, Col 239 TIKANDAS HOTUMAL v KISHNOMAL ILE (1940) Kar 36=185 IC 702=12 R B 174

—O 2 R 2—Scope—Prior suit for cancellation of lease—Decree—Subsequent suit for mesne profits—Maintainability

An earlier successful suit for cancelling a lease of

property omitted in the suit in a proceeding brought under S 51 of the Provincial Insolvency Act Receiver of the estate of the judgment-debtor been adjudicated insolvent although he is precluded by the provisions of O 2 R 2 C P Code from fresh suit in respect of that portion (B&PUNJAB NATIONAL BANK LTD v OFFICIAL

## C P CODE (1908), O 2 R 2

—O 2 R 2 and S 11, Expl IV—*Title suit for possession dismissed—Subsequent suit for redemption of mortgage—If barred*

The defendant who was a mortgagee of certain lands obtained a mortgage decree and in execution of that decree purchased the lands. The plaintiff who was not a party to the suit instituted a title suit for the recovery of possession of the lands. Upon the allegation that

having asserted a title paramount was not entitled to redeem and that the plaintiff's claim was barred under O 2, R 2 and S 11 Expl IV C P Code

Held, that the decision in the title suit did not preclude the plaintiff from claiming redemption in the present suit and that neither O 2 IV, C P Code operated as a bar.

J) KALI NATH SHAHA v MAN

ILLB (1940) 1 Cal 544=

—O 2, R 2 (3)—*Bar of Person entitled to possession suing*

—*Second suit for mesne profits—If lies*

If a person is wrongfully kept in possession of immovable property he is entitled to sue for mesne profits and under R 2 (3) he is bound to include

If he sues only for mesne profits he cannot in a subsequent suit sue separately for possession. In other words

1940 A W R (110) 1021=

—O 2, R 3—*Suit for recovery of possession—Claim for rent*

—O 3, R 4 (1)—*Scope—Advocate of High Court*

can be inferred

Where the report of the peon entrusted with the service of summons on a defendant is to the effect that he sent the summons to the defendant through a maid

## C P CODE (1908) O 6, R 14

servant, and the latter is not examined to prove that the defendant refused to accept the summons, there is no ground for holding that there has been a proper service under O 5, R 17, C P Code, which can be accepted as a substitute for personal service (Varma, J) SNEHALATA DEVI v JANARDHAN PRASAD SINGH

21 Pat LT 340=AIR 1940 Pat 563

—O 5, R 19—*Scope—Express declaration of sufficiency of*

been duly examined in circumstances. RAYANIM IO 695=Mad 213

—O 5 R 20—*Substituted service—Property—House found to be locked—Avoiding of service—If can be inferred*

From the mere fact that when the notice of execution

—O 6 R 4—*Pleadings—Deed impeached as*

—O 6 R 5—*Particulars—Power to order and to dismiss suit, if not furnished—Order of dismissal—Interference by appellate Court—Disposal of Courts*

—O 6, R 7—*Pleadings—New and different*

1940 A W R (110) 1021=1940 O A N 900=

1940 O A 971

—O 6 R 14—*Signing of pleadings—Rule if merely one of procedure—Authorization—Signing if necessary*

o do so. Broadly should be lost in Judges should be with litigants who norance or wrong her hand to allow attitude, holding n opportunity of

C P. CODE (1908), O 6, R 15

See 1939 Dig, Col 241 SARJU PRASAD v BADRI

C P. CODE (1908), O 6 R 17

Blagden, J) EUSOOF KARWA v NIEMEYER

1910 Pat 603  
 firm name  
 by death  
 of part  
 partner—

—O 6 R 17—Amendment—Considerations—

a cause of action which accrued after the  
 was dissolved by the death of one of the  
 An application for the amendment of the  
 plaintiff by substitution of the individual names of the  
 partners and of the legal representative of the deceased

12 R P 539—6 B R 403—A I R 1940 Pat 88  
 —O 6 R 17—Amendment of plaint—When not  
 permissible

be granted without further investigation, but is one  
 which entirely changes the character of the suit and  
 introduces matters which have not been tried in the

allowed Where a plaintiff sues for a declaration that  
 the properties in dispute are trust properties, but subse-

42 F L R 479  
 —O 6 R 17—Does not raised at the beginning—  
 amendment, if can be  
 242 BADRIDAS LAL—  
 IC 23—12 B N 304—  
 A I R 1940 Nag 8

NAZIR AHMAD v TAJ MAHAL BEGUM  
 I L R (1940) Lah 593—186 IC 828—12 R L 425—  
 A I R 1940 Lah 69

—O 6, R 17—Power of Court—Order directing  
 party to amend his plaint—If justified—Revision—  
 Interference  
 A Court has no jurisdiction to direct a party to amend

—O 6, R 17—Amendment—Prayer for—Proce-  
 dure to be followed

It is generally most desirable t  
 amend his pleadings should subm  
 ments in explicit form before lea  
 (Roberts C J and Blagden J)  
 NIEMEYER

—O 6 R 17—Change in the nature of suit—  
 Amended claim based on prior loan—Original claim  
 based on promissory in renewal of original loan—Amended  
 suit by plaintiff as executrix—Character of suit if  
 altered—Liability of executrix for costs

DEO TI  
 —O 6, R. 17—Power of Court—Suit for  
 specific performance—Amendment to add prayer  
 for specific performance—Amendment to add prayer

in any way affected Though when an executrix is sued  
 upon a liability of her testator she has the protection of  
 S 52 C P Code If she seeks to assert a claim as she  
 does in this case, the fact that she possesses it by virtue  
 of her being the sole executrix and beneficiary, puts the  
 defendant at no disadvantage from which he would  
 have been free if the claim had been brought otherwise  
 than in a representative capacity (Roberts, C J and

ert a suit  
 compen-  
 ld not in  
 dment by  
 images in  
 for specific performance unless such relief  
 (Harries, C J and  
 GUHL  
 198—12 R P 566—  
 6 B. N. 433—1939 P W N 880—  
 A I R 1940 Pat 92

—O 6 R 17—Powers of Court—Substitution of  
 cause of action

No power has been given to Courts to enable one dis-  
 tinct cause of action to be substituted for another no  
 can the subject matter of a suit be changed by an amend-  
 ment. (Din Mohammad, J) KHUSHI RAM

C P. CODE (1908), O 6, R 17.

MUNSHI LAL 189 IC 418 = 13 R L 76 =

42 P L R 194 = A I R 1940 Lah 225

—O 6, R 17 and S 115—Power to allow amendment—Object of—Amendment, changing nature of suit—Interference in revision

The power to allow an amendment of pleadings has been conferred on Courts in the interests of justice, with a view to correcting mistakes and bringing out the real matters in issue between the parties. But this power should not be exercised in favour of one party so as to cause loss to the other.

—O 6 R 17—Refusal to  
C P CODE S 115 AND O  
OF PLAINT

—O 6, R 17—Second appeal—Amendment of plaintiff—Suit for sale on mortgage—Finding that mortgage is opposed to statute and unenforceable—Amendment to include prayer for possession—Acquisition of title as owner by plaintiff

A plaintiff cannot be amended in a way as to alter the character which is not permissible. Where a plaintiff who had a usufructuary mortgage over certain rayati land and had been dispossessed brings a suit for sale on his mortgage, but, on the Courts holding that the mortgage being in contravention of the statute cannot be enforced prays for permission to amend his plaintiff in second appeal so as to enable him to claim possession as a person who has by prescription acquired an absolute title as owner, the amendment cannot be allowed. (J) MAKSUD NATH DAS

12 R P 575 =

—O 6 R 17—7  
plaint in second appeal—Permissibility

Where a subsequent mortgagee instituted a suit for possession by redemption of the prior mortgage after that mortgage had ceased to exist having been previously redeemed by the mortgagor, the defect in the frame of the suit is a technical one and the second mortgagee can be allowed even in second appeal to amend the plaintiff so as to convert the suit into a mere suit for possession as mortgagee. (Bhidi J) HARDIAL v GURDITTA

188 IC 608 = 13 R L 26 =

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ill.

It could pass an order under O 7, R 10 C P Code if acquired that jurisdiction by virtue of a Government notification it cannot thereafter pass an order under

O P. CODE (1908) O 7, R 14

O 7, R 10. (Yorke and Ghulam Hassan, JJ)

ABDULLA KHAN v TIREHMAN DUTT SINGH  
1940 B D 590 = 1940 O W N 1212 =  
1940 O A 1118

—O 7, R 10—Return of plaintiff—When to be made and when not to be made

If on the face of the plaintiff the Court finds that it has no jurisdiction to try the case it will return the plaintiff at any stage of the case if the Court fails to detect want of jurisdiction in it to begin with, but where the Court is triable by the Court and challenge of the other side the Court's own allegations in the plaintiff, to try the case on merits and preliminary question of jurisdiction. If it is to the conclusion that plaintiff's suit is dismissed as it cannot be maintained to dismiss the suit and no order of the plaintiff under O 7, R 10.

A I R 1940 Nag 331.  
—O 7, R 10—Suit filed in Court having no jurisdiction—Order of dismissal—Propriety

42 P L R 203 = A I R 1940 Lah 171.

—O 7, R 11—Applicability—Application to sue in forma pauperis

O 7, R 11 does not apply to an application for permission to sue in forma pauperis. Such an application is specifically dealt with by O 33 R 8 which makes it clear that an application for permission to sue in forma

—O 7 R 11—Applicability—Memoranda of appeal

O 7, R 11, C P Code, applies to memoranda of appeal. (Meredith, J) GAJADHAR BHAGAT v MOTI CHAND 190 IC 671

—O 7 R 11—Rejection of appeal as time barred—Appeal See C P CODE, O 2 (2) AND O 7, R 11 190 IC 671

—O 7 R 11 and S 149—Relative scope of See C P CODE, S 149 AND O 7, R 11

unnecessary as a general rule to see these documents before he files his own statement. It may in certain circumstances be necessary, but then the procedure laid

## C P CODE (1908) O 8, R 2

down in O 11, R 18 (2) must be observed. But whether the application is made under O 11, R 15 or O 11 R 18 (2) he must act promptly and delay in itself may be a ground for refusing to grant time for

—O 8, R 2—Que.  
—When duty of Court  
TION ACT S 3 AND C

—O 8, R 5—  
T on Court testimony

itself so inconsistent as not to be capable of admitting or denying anything (*Robert, C J and Dunkley J*)  
S A MITRA, HIGHER GRADE I LEADER *In re*  
190 IC 320=13 RR 81=41 Cr LJ 899=  
A I R 1940 Rang 190

—O 8 R 6—Accounts of same person in different names—Set off—If can be claimed

If the accounts are of one and the same person, mere fact of the accounts being separate or in different names would not attract the provisions of O 8 R 6 C P Code and a set off can be claimed (*Dalip Singh, J*)  
FIRM RALLA RAM DAULAT RAM v JASWANT RAI  
189 IC 464=13 RL 87=  
42 PLR 201=A I R 1940 Lah 290

—O 8 R 6—  
tion proceedings  
S 46

—O 8, R 6  
fulfilled  
Ann on O 8 R 6 C P Code has a co

in the plaintiff's suit. A claim for commission over reduction of losses stated approximately, was held to be not an 'ascertained sum' of  
GIRDHARILAL v SURAJMAL  
1940 NLJ 176=

—O 8 R 6—Equitable set off—Discretion of Court

Equitable set off cannot be claimed as of right and the Court has a discretion to refuse to allow it. If a protracted enquiry is necessary for determination of the sum due it may be a ground for refusing it (*Gruer J*)  
GIRDHARILAL v SURAJMAL  
190 IC 651=  
1940 NLJ 176=A I R 1940 Nag 177

—O 8 R 6—Right of set off—Parties not filing same character

In a suit for recovery of money against the defend

—O 8, R 6—Scope—Suit by landlord for rent—Counter-claim by defendant tenant for damages for dis possession—Properly—Failure to pay Court fee on counter claim—Right of defendant to reliefs.

Y. D. 1940-18

## O P CODE (1908), O. 9, R. 9.

Where in a suit for rent by a landlord against his tenant, the tenant makes a counter-claim for damages on account of his having been dispossessed by the landlord, but does not pay Court fee on the amount claimed

herefore, the  
and refers the  
urt would be  
be said that  
(*Harper C.*  
D v HARI  
21 PLT 821.  
rtained sum—Claim in

A claim for a sum in respect of the boarding and lodging of another, when no fixed amount either monthly or for any period had been agreed upon between the parties cannot be called one, in respect of an 'ascertained sum' and so cannot be claimed to be set off (*Davis*)  
CHAMELI v CHHITER MAL  
1939 AMLJ 159  
—O 8 R 6 and 7—Scope—If to be enforced as

on the full amount of the set off and not only on the amount claimed in excess of that claimed by the plaintiff court fees should be paid also on an equitable set off (*Gruer, J*)  
GIRDHARILAL v SURAJMAL  
190 IC 651=1940 NLJ 176=  
A I R 1940 Nag 177

Restoration of suit—Duty of Court  
1 245 MAHOMED RAMZAN v  
186 IC 306=12 RL 384  
—O 9 R 6 and 7—Scope—If to be enforced as

—O 9 R 8—Plaintiff not appearing—Proper

there is no appearance what  
plaintiff, the case should be  
The Court is not entitled  
to pass an order holding over the case indefinitely.  
(*Harper, S M and Sathe J & J*)  
AJUDHYA v.  
BUDHSEN  
1940 RD 402=  
1940 AWR (B.R.) 214

—O 9 R 9—Applicability—Proceedings under Provincial Insolvency Act See 1939 Dig Col 246  
RAM DAYAL BABU LAL v LAKHU SAO  
185 IC 857=6 BR 270=  
12 R.P 427=A I R 1940 Pat 68.

—O 9, R 9—Dismissal in default—Restoration—Adequate ground

When only a appears with only one day's delay explaining his absence and this tested by the other party at the should be accepted as adequate (*Harper, S M and Sathe J.*)  
A v ISHAQ HUSAIN  
(B.R.) 132(2)=1940 O.A 783  
Dismissal for default—Restoration

—Duty of advocates  
Advocates who are engaged in cases which are fixed for hearing at a given time and place cannot be allowed to treat the Court before which the hearing is

C. P. CODE (1908), O 6, R. 17.

MUNSHI LAL.

—O 6, R.

ment—Object of

—Interference

The power to grant an amendment of pleadings has

as to cause prejudice to the other party—where an amendment is sought

C. P. CODE (1908), O 7, R 14

O 7, R 14

Court finds that it has  
t will return the plaint  
e Court fails to detect  
begin with, but where

the plaint *prima facie* is triable by the Court and

### plaint in second appeal—Permissibility

Where a subsequent mortgagee instituted a suit for possession by redemption of the prior mortgage after that mortgage had ceased to exist having been previously redeemed by the mortgagor, the defect in the frame of the suit is a technical one, and the second mortgagee can be allowed even in second appeal to amend the plaint so as to convert the suit into a mere suit for possession as mortgagee (*Bhade, f.*) **HARDIAL v. GURDITTA.** 188 IC 608—13 RL 26=

42 PLR. 139—ALR 1940 Lah 201.

—O 7, R 10—Applicability—Suit instituted in proper Court that  
See C

—O 7, R 10—Order under—Competency—Court originally not having but subsequently invested with jurisdiction—If

Where at the time it had no territorial jurisdiction it could pass an order under O 7, R. 10 C. P. Code, it acquired that jurisdiction by virtue of a Government notification it cannot thereafter pass an order under

—O 7, R 11—Applicability—Memoranda of appeal

O 7, R. 11, C. P. Code, applies to memoranda of appeal (*Meredith, J.*) **GAJADHAR BHAGAT v. MOTI CHAND** 190 IC 671

—O 7, R 11—Rejection of appeal as time barred—Appeal See C. P. CODE, O 2 (2) AND O 7, R. 11 190 IC 671

—O 7, R 11 and S 149—Relative scope of, See C. P. CODE, S. 149 AND O 7, R. 11.

1940 O A 699.

—O 7, R 14 (2) and O 11, Br. 15 and 18 (2)—as evidence—If pleadings—documents—Procedure to be

insist on inspection of documents, before he files his written statement, he cannot except in special cases insist upon inspection with reference to documents

unnecessary as a general rule to see these documents before he files his own statement. It may in certain circumstances be necessary, but then the procedure laid

## C P CODE (1908), O 8, R 2

down in O 11, R 18 (2) must be observed. But whether the application is made under O 11, R 15 or

—O 8, R 2—Question of limitation—Raising of  
—When duty of Court and of defendant. *See* LIMITA  
TION ACT S 3 AND C P CODE, O 8 R 2

names would not attract the provisions of O 8 R 6  
C P Code and a set off can be claimed (*Dalit Singh, J.*) *FIRM RALLA RAM DAULAT RAM v JASWANT RAI*  
189 IC 464=13 RL 87=  
42 PLR 201=AIR 1940 Lah 290

—O 8 R 6—*See* *Restoration of suit—Duty of Court*  
S 46

—O 8 R 6  
fulfilled

According to O 8 R 6 C P Code before a claim can be claimed it must be presented in a written statement which shall have the same effect as a plaint. It must be shown that it is an 'ascertained' sum legally recoverable by the defendant from the plaintiff and that both parties fill the same character in the plaintiff's suit. A claim for commission over reduction of losses stated approximately, was held to be not an 'ascertained' sum of money (*Gruer, J.*) *GIRDHARILAL v SURAJMAL*  
190 IC 651=  
1940 NLJ 176=AIR 1940 Nag 177

—O 8 R 6—Equitable set off—Discretion of Court

Equitable set off cannot be claimed as of right and the Court has a discretion to refuse to allow it. If a protracted enquiry is necessary for determination of the sum due it may be a ground for refusing it (*Gruer, J.*) *GIRDHARILAL v SURAJMAL*  
190 IC 651=  
1940 NLJ 176=AIR 1940 Nag 177

—O 8 R 6—Right of set off—Parties not filing same character

In a suit for recovery of money against the defendants as the reversioners of one A, the defendants are not entitled to claim set off for the amount of a decree to which they had become entitled not merely as the reversioners of A but also as heirs of a third person who has nothing to do with the plaintiff's suit as they do not fill the same character in the two suits (*Henderson, J.*) *SURENDRA NATH v KRISHNA CHANDRA*  
44 O.W.N. 824

—O 8, R 6—Scope—Suit by landlord for rent—Counter-claim by defendant tenant for damages for disposssession—Propriety—Failure to pay Court fee on counter claim—Right of defendant to relief

## C P CODE (1908), O 9, R 9.

Where in a suit for rent by a landlord against his tenant, the tenant makes a counter-claim for damages

foreign to the scope of a rent suit. If, therefore, the Court refuses to enter into this question and refers the defendant tenant to a separate suit, the Court would be exercising a wise discretion and it cannot be said that

on the full amount of the set off and not only on the amount claimed in excess of that claimed by the plaintiff. Court fees should be paid also on an equitable set off (*Gruer, J.*) *GIRDHARILAL v SURAJMAL*  
190 IC 651=1940 NLJ 176=  
AIR 1940 Nag 177.

Restoration of suit—Duty of Court  
1245 MAHOMED RAMZAN v  
186 IC 306=12 RL 384

—O 9 R 6 and 7—Scope—If to be enforced as

—O 9 R 8—Plaintiff not appearing—Proper order to pass

Where at the hearing there is no appearance whatsoever on behalf of the plaintiff, the case should be dismissed under O 9 R 8. The Court is not entitled to pass an order holding over the case indefinitely. (*Hargreaves, S.M. and Sathe, J.M.*) *AJUDHYA v. BUDHSEN*  
1940 ED 402=  
1940 A.W.R. (B.E.) 214

—O 9 R 9—Applicability—Proceedings under Provincial Inolvency Act. *See* 1939 Dig Col 246  
*RAM DAYAL BABU LAL v LAKHU SAO*  
185 IC 857=6 BE 270=  
12 RP 427=AIR 1940 Pat 58.

—O 9, R 9—Dismissal in default—Restoration—Adequate ground

Where a plaintiff appears with only one day's delay and files an affidavit explaining his absence and this explanation is not contested by the other party at the subsequent hearing it should be accepted as adequate ground for restoration. (*Hargreaves, S.M. and Sathe, J.M.*) *CHANDRA BHAGAT v ISHAQ HUSAIN*  
1940 A.W.R. (B.E.) 132(2)=1940 O.A. 783

—O 9, R 9—Dismissal in default—Restoration—Duty of advocates

Advocates who are engaged in cases which are fixed for hearing at a given time and place cannot be allowed to treat the Court before which the hearing is to take



C P. CODE (1908), O. 9, R. 9.

C P. CODE (1908) O. 9, R. 13.

their non attendance the suit can still be restored to the trial injustice was done to the plaintiff, the High Court

## AIR 1940 Rang 162 (FB)

O. 9, R. 9 and S. 151—Dismissal in default—When should be ordered—Dismissal early in the day and under misapprehension—Restoration under inherent powers

An order of dismissal in default should not be passed till the end of the day when the Court was rising, because there could be no default until the Court rose for the day. was dismissed in default was once for its fact no dismissal for default at all and that had perfect jur under a misapp (Ghulam Han PRASAD 1

O. 9, R. 9—Scope of—Application under O. 21, R. 13—Dismissal on failure to satisfy condition imposed—Subsequent application to restore prior application—Competency—Dismissal—Appeal against order of dismissal—Competency—C. P. Code, O. 43, R. 1.

A suit was decreed *ex parte*. The defendant applied

O. 9, R. 13—Applicability—Court purporting to act under O. 17, R. 3 on the date fixed for final hearing. See O. 17, R. 3 AND O. 9, R. 13. APPLICABILITY OF O. 17, R. 3 1940 A L J 200

O. 9, R. 13—Applicability to insolvency proceedings—*Ex parte* order of adjudication on debtor's application—Creditor's right to apply to set aside *ex parte* order.

O. 9, R. 13 C P Code, is applicable to proceedings under Insolvency Act, and the insolvency

## 12 R.P. 649 = AIR 1940 Pat 623

O. 9, R. 13—Application under—Also appeal *ex parte* decree—Dismissal of appeal—Effect on *ex parte* decree—C P Code, O. 41, R. 11 See 1937 Dig Col. 349 KIKABAI V. MT. SAFIA BI

ILLR (1940) Nag. 496.

O. 9, R. 13—Application by way of motion—Limitation.

An *ex parte* decree was passed on 5th April 1939. have the tion in the as endorsed having been resentation, 1939 in 30 days (Sen. J.)

an applicant satisfy the him of that n appearing- ing to that to record an appeal against the order dismissing the second application was not maintainable under O. 43, R. 1, C P. Code, (3) express finding that the applicant was prevented by sufficient cause from appearing, before setting aside the

## C P CODE (1908) O 9 E 13

*ex parte* decree Merely because a Court does not set forth the reasons for passing an order setting aside the *ex parte* decree, the order cannot be said to be one passed without jurisdiction, and ground for interfer

VIRESAM v ADIN

## —O 9 E

an to th failure to furnish the security ordered (Lakshmar CHIDAN

## —O

from app K K N K A R CHETTYAR FIRM v ACA ME SHEERA ZEE. 185 I O 663—12 R R 211

—O 9, E 13 and O 17, R 2, Expl. (Allaha bad)—Refusal of adjournment—*Ex parte* decree—Remedy

Where on the day fixed the defendant appeared and asked for time to enable him to file the written statement but the Court refused it and passed an *ex parte*

against several defendants—*One* Plaintiff withdrawing against *ex parte* decree against one only of *ex parte* decree—Right of others—Procedure

The plaintiff who purchased certain lands from the 1st defendant was unable to obtain possession of the

been in enjoyment for for refund of sale declared *ex parte*, and have a decree against damages and withdrew and 3 Later on, howe *ex parte* decree set a plaintiff now prayed f defendants 2 and 3 also

Held that though it would be equitable and just to allow the plaintiff to proceed against defendants 2 and 3 the Court had no power to do so either under O 9 R 13 or O 23 C P Code There was no decree against defendants 2 and 3 which could be set aside under O 9, R 13 and O 23 did not provide for with drawing a withdrawal of a suit the only thing whi.h

## C P CODE (1908) O 12

could be done for the plaintiff was to grant permission under O 23, R 1, C P Code, to file a fresh suit against defendants 2 and 3 (Horwill, J) RAJA- 1940 M W N 488— I R 1940 Mad 765— (1940) 1 M L J 811

ause—Attorney's illness

the date fixed med about the g to the attor The suit was

sufficient cause ie date the suit was taken up for RAJAGOPALAN v UNIQUE A I R 1940 Cal 373

—Rights of adversary

order for discovery of documents a defendant may nent on the ground it if, on the other bearing in support cannot be validly made under O 11, R 12 all the documents relating to the case should be embodied in the affidavit of documents by the person against whom the order for discovery is made If how ever the defendant considers that he is entitled to protection in respect of the production of any particular documents which may be entered in the affidavit under O 11 R 13 of the Code he will be at liberty to raise such objection at the proper stage of the proceedings such documents on of them under DA MOHUN t.

~190 I O 507— R 1940 Cal 331 discovery of docu-

vider than O 13, in discovery of an e one and is not

—O 11 E 12 and S 30—Decision of case depend- ing upon documentary evidence—Duty of Court

be parties concerned the decision of the extent upon docu ally a case in which

—Orders 12 and 23—Applicability—Proceedings under U P Land Revenue Act

The U P Land Revenue Act being a self contained enactment in respect of procedure the provisions of the C P Code do not apply to proceedings under the Act unless they have been made specially applicable Orders 12 and 23 are not among those which have made applicable to such proceedings (Hester, C

C P CODE (1908), O 13, R 2

a *id* Sathe,

1

—O 1

put in at li

trial Court—Interference in appeal

Though O 13, R 2, C P Code, requires the parties to put in their documentary evidence at the first hearing of the suit the Court has still a discretion under the rule

support of an amendment which the Court considered justifiable (*Agarwala J*) KAMESHWAR SINGH *v* MODH NARAIN CHOWDHURI 21 Pat LT 440

—O 14, R 5—Amendment or framing of additional issues—Powers of Court—Restrictions—Issue not arising on the pleadings, if can be framed

Under O 14 R 5, C P Code, the Court has

NANDLAL *v* DEORAO 185 IC

1939 N L J 591=

—O 17 R 1 and 3—Proc

Scope and extent

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are

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cannot be restricted by R 3 of the same order (*Gruer J*) IANI *v* SONI 186 IC 473=

Court—Jurisdiction

circumstances justify such a course he can pass an order on the merits but he must have material before him to justify that course If

he cannot in the exercise of his discretion to deal with the case of the matter under C adjournment R 3 of O 17 is not in default of appearance as is R 2, brought into operation by default c deals with the failure by a party to do h- has been allowed time, and even Court must have material to enable it to exercise proper discretion by deciding the case of merits Where the hearing of a suit has been adjourned under O 15, R 3 for the production of evidence by the parties and the plaintiff fails to appear on the adjourned date, it

C P CODE (1908), O 20, R. 11.

absent on adjourned date—Application for adjournment by another advocate refused—Plaintiff not giving evidence—Dismissal of suit—If one under R 2 or R. 3—Restoration under O 9, R 9—Competency. See 1939

249 VENKATESWARA RAO *v* SUBRA

186 IC 455=12 R M 610.

17, R 2, Expi (Allahabad)—Failed to

Meaning See C P CODE O 9 R 13

AND O 17, R 2 1940 A W R (HC) 161

—O 17, R 3 and O 9, R 13—Applicability of

O 17, R 3—Absence of defendant on date fixed for final

hearing—Decree after examination of plaintiff's wit-

nesses—If could be set aside under O 9, R 13

Where after several adjournments a case was posted to a particular date for final hearing and on that date

was once again adjourned to a later date owing to the

of the defendant on a date fixed on each date

e defendant had

had been allowed

me into play It

ct that the Court

—O 17, R 3—Scope—Decision of suit under—

9, R 13 if possible See 1939

PUJAN KALWAR *v* BISHNATH

186 IC 102=12 R A 377

its—Use of—Duty of Court to

r cross-examination See 1939

YANA *v* LAKSHMAYYA

185 IC 421=12 R M 543.

—O 20, R 10 and O 21, R 31 and S 75—Suit

specific movable properties—Form of decree—Com-

mission to ascertain their value—Power of Court to

In a suit for recovery of specific movable properties,

the decree ought to be a decree for the delivery of the

movables enforceable under O 21, R 31, C P Code,

—O 20, R. 11 (1) and (2)—Scope—Juris-

diction of Court—Money suit—Decree for instal-

ments—Subsequent decree by consent of parties

for instic



## C P CODE (1908), O 20, R 18

partition and directing Collector to carry out division and to put parties in possession—  
to send papers to Collector—  
tation See 1939 Dig, Col  
FERNANDEZ

## O 20, R 18—Partition decree—Essentials—Duty of Courts

O 20, R 18 enjoins the Court first to ascertain judicially who all the persons are who are interested in the property to be partitioned and then in its decree to declare who they are and also what their rights are. It goes to the whole root of the matter that at the outset the entire interests in the property should be ascertained

every one whose presence is necessary to enable it to make the declaration which

O 20,  
cially d  
to cont

Court the duty of declaring what the rights of the parties interested in the property are it means that there shall be a judicial declaration and not a mere *ex parte* declaration in the absence of some of the parties (Braund, J)

1940 A

O 20,  
tion—How to  
KANADA KIST  
188 I C

O 21-  
Dig, Col 251  
OF MADRAS

O 21 F

to arbitration—Power of Court to give permission for reference and file award in execution—Sch 11

There is no illegality in adopting the procedure provided by Sch II C P Code to execution proceedings, if those proceedings are regarded merely as a means to the adjustment of the decree. It is open to the court to adjust their d

in execution pro  
to the executing  
to refer their d  
be valid and the  
adjustment of it  
a new decree w  
The order of th  
and a decree to  
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O 21, 1.  
manner of enf  
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NIRMAL K. MA

When a decree  
and execution ha  
Court, the judge  
that Court for th  
decree and suc

## C. P. CODE (1908), O 21, R 2

record the satisfaction if it finds after due enquiry that  
Certification of adjust  
2 In construing the  
in sub R (2) of R 2  
de to sub-R (1) of the

same rule, and sub-R (1) says that the Court is the  
Court whose duty it is to execute the decree (Roberts,  
C J. and Dunkley J) JAGADISH MISHRA v SAW EU  
HOKE

190 I C 680=A I R 1940 Rang 236.  
1940 Rang L R 356=  
O 21, R 2—Compromise after decree—Record-  
ing of—Bar in law if any

Where an alleged compromise was admittedly subsequent to the passing of a final decree in a suit, and it  
O 23, R 3 C P Code, to be recorded  
ation was rejected, it was held that there  
law to the recording of that compromise  
2 C P Code (Bennet and Verma,  
J) GAYA PRASHAD v RAM CHARAN.

I L R (1940) All 190=187 I C 805=  
12 E A. 569=1940 A W R (H C) 105=  
1940 A L J 88=A I R 1940 All 184

O 21, R 2—Decree holder—If includes attaching  
decree holder—Holder of attaching decree—If com-  
petent to certify satisfaction of attached decree See  
C P CODE O 21, R 53 (3) 51 L W 148=

O 21, R 2 and 15—Joint decree holders—  
Right of one to receive payment and give valid discharge  
—Adjustment between judgment-debtor and one of  
several joint decree holders—If binds the rest—If can be  
recorded—Duty of Court

In the case of partners who have become joint decree  
holders

C. P. CODE (1908), O. 21, R. 2

(Datta, J. C. and Weston, J.) SHAHBAZHAN v KAKALMAL I L R (1910) Kar. 461- AIR 1910 Sind 230

—O. 21 R. 2—Limitation—Certification by decree-holder—Right of judgment-debtor to have recorded

There is no limitation for a decree-holder payments received by him under the decree, a decree-holder has really certified at one stage, ment-debtor is entitled to take advantage of it and request the Court to record satisfaction to that extent

C P CODE (1908), O 21, R 11.

amount received by him must go towards the payment of every rupee of his debt, and the decree for costs as against the third defendant must therefore be regarded as having been

—O 21, R. 2 (3)—Scope—Maintenance decree

There is no limit of time within which and no particular

190 IC 760-6 Cut.L.T. 5-AIR 1910 Pat. 694. —O 21 Rr 5 and 8—Annul ability and

Aar Lall, J.J.) SONYA BISOI v. ANANDA PADHANO. 6 Cut L T 7=21 P L T. 650.

—O. 21, R 2—Scope—Decree for specified amount against two persons and for costs against them and another—Receipt by decree-holder of amounts by way of rateable distribution amounting to half of the decree amount—Appropriation—Right of decree-holder to adjust towards decree-amount proper excluding costs—Liability in respect of costs—If reduced pro tanto

A decree awarded to claim sum payable by defendant 3 as well as by decree was executed in his own execution execution by another creditor of defendants 1 and 2, the decree holder realised a sum amounting roughly to about one half of the total decree amount including costs, by way of rateable distribution.

—O 21, R 5—Decree not transferred through District Court—Effect

The provisions of O. 21, R. 5, C P. Code, are mandatory, and a decree cannot but be sent to the District Court. Consequently if it is sent to any other Court that Court has no jurisdiction at all from the very start. (Din Mohammad, J) BARKAT RAM v. BHAGWAN SINGH. 42 P L R 404=

AIR 1940 Lah 894. —O. 21, R. 10—Decree transferred for execution—

(3) AND O 21, R. 10 21 Pat.L.T. 146. —O 21 R 10 (2)—Person added as plaintiff—Interest adverse to plaintiff—Striking out as plaintiff and transposing as defendant as necessary party—Expediency See 1939 Dig Col 237. VANJIAPPA GOUN

- A.I.R. 1940 Mad. 69. n application—Ground s tion to mention—If

receiving the money that it must all go towards the satisfaction of the first of these two debts, the

It is only under O. 7, R. 6, C. P. Code, that ground of exemption from the law of limitation sh

C. P. CODE (1908), O. 21, R. 11

C. P. CODE (1908), O. 21, R. 17.

not operate as a stay of execution on the decree—*Right of legal representative to con-*

that in fact all decree-holders have received their shares of the amount, then an adjustment binding all decree-holders can and should be recorded. But when no express authority or record has been established have to be looked to.

WADERO SHAHEBAZ KHAN v. KAKALMAL

I.L.R. (1940) Kar 461—A.L.R. 1940 Sind 230

O. 21, R. 15—Omission to state that execution is for benefit of all decree-holders.

O. 21, R. 16—Construction—"Court which passed the decree"—Award under Co-operative Societies Act—Power of Col 256.

10 Mad 38

O. 21, R. 17—Amendment—Powers of Court—Nature of amendment permissible under rule Rowland, J.—The C. P. Code does not make provi-

fatal—Several decree-holders—*one only*—Omission to Effect—Applicant acting direct amendment. See AMMAN

cautions

C P CODE (1908), O 21, R 18

(Somayya, J) MUTHUKRISHNA RAJA v VISWALINGA  
KADAVARAYAR 1940 M.W.N 547=  
A.I.R 1940 Mad 893

—O 21, R. 18—Right to obtain order under—  
A final attachment of cross-decree—If necessary

A decree-holder is not precluded from obtaining an order under O 21 R 18, C P Code, by reason of the fact that at the time when the execution application is filed, the cross decree had not been actually attached (Lord Romer) MAHALINGAM CHETTIAR v RAMA-NATHAN CHETTIAR 190 I.O 13=

1940 O W N 880=52 L.W 540=1940 O.L.R 556=

1940 M.W.N 1194=7 B.R 24=13 R.P.C 51=

1940 A.L.J 837=A.I.R 1940 P.C 173=

(1940) 2 M.L.J 677 (P.C)

—O 21, R 18—Right to set off cross-decree—If defeated by attachment of cross-decree by third party.

The moment that cross-decrees such as are mentioned in R 18 of O 21, C P Code, are in existence the decree-holders become entitled to the right of set-off. It is true that effect cannot be given to the set-off until applications are made to the Court for the execution of the two decrees. The right nevertheless is there, and this right of the holder of one decree cannot be defeated by an

the right of set off be exercised. Hence the rule laid down in O 21, R 18 must be first applied before any question can arise for rateable distribution under S 73. (Lord Romer) MAHALINGAM CHETTIAR v RAMA-NATHAN CHETTIAR 190 I.O 13=

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C P CODE (1908), O 21, R 22

the sale must be held to be void for want of notice under O. 21, R. 22, in so far as the share of the latter son is concerned. But as regards the shares of other judgment-debtors the sale cannot be held to be void. (S. K. Ghose, J)

ANIL KUMAR ROY v AHAMMED ALI.

187 I.C. 121=12 R.C. 546=A.I.R. 1940 Cal. 23.

—O 21, R. 22—Omission to issue notice or to

allowing himself to be described as minor represented by guardian ad litem—Notice sent to guardian ad litem—Sale—If a nullity—Right of judgment debtor to plead invalidity on ground of non-compliance with O 21, R 22

Where a defendant judgment debtor is in fact a

execution application as a

guardian ad litem without

by him, and notice under

agent sent to him at one time

the right of set off be exercised. Hence the rule laid down in O 21, R 18 must be first applied before any question can arise for rateable distribution under S 73. (Lord Romer) MAHALINGAM CHETTIAR v RAMA-NATHAN CHETTIAR 190 I.O 13=

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C P CODE (1908) O 21 R 24

187 I C 121=12 R C 546=A I R 1940 Cal 23

—O 21 R 24—Execution of process—Delegation

—Power of Nazir See 1939

RAM v TULSI DAS ASA NANI

12 R L 407

—O 21 R 24—Return

server for endorsement—Pro

warrant—Legality—Process ser

The bailiff has power to deleg

warrant to the process server

not delegate his authority to arr

but merely returned the warrant

and not for further execution at

executed the warrant instead

arrest is unlawful But the

protected under S 79, I P Code as he made a genuine

mistake of fact and thought that the process was

returned to him for re execution and was not actuated

by malice (*Mosely J*) MAUNG HITWE v BA THANT

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 24—Warrant of arrest—When

deemed to be executed

When the judgment debtor is arrested and brought

before the Court the wa

is to say, the arrest has

not have been carried o

may have resulted in t

debtor (*Mosely J*)

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 35—Delivery of possession of land—If

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 37—Warrant for

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 37—Warrant for

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41 Cr L J 567=A I R 1940 Rang 112

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41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 37—Warrant for

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41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 37—Warrant for

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 37—Warrant for

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 37—Warrant for

C P CODE (1908), O 21 R 49

(Baguley, J) SHEERAZEE v REDDY

1940 Rang L R 253=188 L C 303=12 R R 364=

obta

See

1940 N L J 56

—O 21, R 48—Duty of Court—Ascertainment of

against the same judgment debtor (*Dhatle J*)

BHAGWANDASS RAMPROSAD : SECRETARY OF

STATE 21 Pat L T 776

—O 21 R 48 and Ss 73 and 151—Issue of pro

hibitory order at the instance of one of the decree holders

—Nature of his rights—Existence of other decree holders

if a ground to cancel order—Order directing dis

tribution among all creditors—Legality—Inherent

powers—Limits

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

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41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 48 and Ss 73 and 151—Issue of pro

hibitory order at the instance of one of the decree holders

—Nature of his rights—Existence of other decree holders

if a ground to cancel order—Order directing dis

tribution among all creditors—Legality—Inherent

powers—Limits

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

See 1939 D L C 101 BALUSWAMI v OFFICIAL

ASSIGNEE OF MADRAS

189 I C 408=

13 R M 270

—O 21, R 46—Debt outside

Attachment of—Power of Court

It is not competent to a Court

execution of a decree a debt p

judgment-debtor outside its jurisc

person not resident within its

ing

O 21 R 49 (2) charges the interest of the

partner in the

1940 Rang L R 253=188 L C 303=12 R R 364=

41 Cr L J 567=A I R 1940 Rang 112

—O 21, R 46—Debt outside

Attachment of—Power of Court

It is not competent to a Court

execution of a decree a debt p

C P CODE (1908), O 21 R. 49

*Sharfe, JJ*) T R M RAMASWA  
M M K KUTTAI CHETTYAR

13 B R 39—A I R

—O 21, R 49 (2)—*Rights of  
of partner who has overdrawn—Prior  
reimbursement—Appointment of receiver*

Where the interest of a partner in  
profits and has nothing to do with the  
partner overdraws his share of the profits then the re-  
maining partners are entitled to reimburse themselves  
from the overdrawn pa before handing over any

position has a right to  
nothing be paid over to it  
his private and personal p  
ments made for busine  
*Bose J*) PANMAL KESI

—O 21 R 50—

family firm See 1939

PRASAD v RADHA KISHUN DUTT RAI

21 P L T 618—A I R 1940 Pat ::

—O 21 R 50 (2)—*Procedure—Application  
leave under—Prior application for execution—If  
duty precedent*

There is no warrant for hol  
under O 21, R 50 (2) C P  
a decree obtained against a fir  
ner or partners cannot be m  
instance a regular darkhast ha  
R 11, C P Code The logic  
leave first and then to execut  
(*Beaumont, C J and Kania*  
s COOVERBAI

42 Bom L R 564

—O 21, R 50 (2)—*Scop  
bility may be disputed See 19*

RAM NATHNUL v MD VALU

186 I O 44—12 R O 427—A I R 1940 Cal 28

—O 21 Br 53, 60 and 47—*Decree for arrears of*

C P CODE (1908), O 21, R 53

visions decrees cannot be dealt with as  
'property' and are not so treated for the  
the special provisions which relate to  
Again, R 47 which contemplates two or

*request*  
O 21, R 53 (1) (d) does not purport to prohibit the

—O 21 R 53 (3)—*Construction—Attaching  
decree holder—Power to certify satisfaction of attached*

P Code would not apply for the words 'some  
other person' occurring in the rule can only mean when  
the context is considered some person other than the

13 B M 428—1940 M W N 505—51 L W 148—  
A I R 1940 Mad 534—(1940) 1 M L J 292

—O 21, R 53 (3)—*Decree attached by several  
execute without the consent of*

r thinking that a  
in attaching a decree

C P CODE (1908), O 21, R 53.

able to apply to the Court for execution of the decree

C P CODE (1908), O 21, R 57.

—O 21, R 54—Attachment of property—Validity

R 556

r living

ty to be

ig, Col

185 I O 42—12 L R 243

4—Personal service of prohibitory

debtor—Necessity for See 1939 Dig

CHETTYAR FIRM v ANDATHAL

185 I O 386—12 R R 192

—Attachment of money—How long

currence in or conse

1940 O

—O 21 R 53 (4)—*Continuance*—Court in which  
passed the decree—If includes Court to which decree  
is sent for execution—Decree—Transfer for execution  
to another Court—Jurisdiction of latter Court to  
attach and sell partition decree of judgment debtor

The words 'the Court which passed the decree' in  
O 21 R 53 (4) C P Code include the Court to

judgment

O 21, R 57, C P Code, applies to a case where  
application is made in execution against property attach  
ed before judgment and the application is dismissed on  
default of the decree holder

Weston J.—An attachment obtained before judgment

by O 21 R 53 (4) C P Code, applied to the terms of  
S 42 C P  
been sent for  
any of the

a sale of property attached before judgment is  
or in a darkast and the darkast is disposed of,  
hment is determined so far as such property is  
d This is a general rule applicable to the  
ration of an attachment before judgment after  
osal of the darkast in which the property  
l is sought to be sold, It does not, however, apply  
e where there is a specific order for continuance  
attachment made with the consent of the parties

J) BALIRAM NARAYAN v SAKHARAM

190 I O 21—13 R R 90—

42 Bom.L.R. 423—A.I.R. 1940 Bom. 250

O 21, R 57—Applicability—Default of decree

—Attachment—Subsequent insolvency of judg  
ment debtor—Order dismissing execution petition—If  
term notes attachment—Subsequent appointment of a

—O 21, R 54—Attachment of immovable pro  
perty—Service of prohibitory order—If necessary to  
complete the attachment—Procedure required  
R. 54

There is no warrant for the proposition th  
attachment is not complete until notice of the  
order is served upon the owner of the property where  
by O 21 R 53 that a copy of such

—O 21 R 57—Applicability—Rejection of execu  
dismissal for

ne with a case  
dismissed an  
e the execution  
then cognizance  
t a later stage  
ted by R 57  
with caution to  
place before

## C P CODE (1908), O 21 R 57

judgment or on a prior execution application in these classes of cases. If an application for execution is rejected under R 17 of O 21 *in limine* as not complying with the formal requirements of law it does not amount to a dismissal within the meaning of O 21, R 57 C P Code. The legal position is that no execution application in accordance with law must be deemed to have been filed and therefore an attachment effected before judgment and existing does not come to an end (*Varadachariar and Abdur Rahman J*)

## C P CODE (1908) O 21 R 60

—O 21, R 58—Applicability—Insolvent—Judgment debtor—Official Receiver—If representative—Attachment—Object on by Receiver claiming that all property vested in him from date of insolvency petition—Rejection—Remedy—Appeal or suit. *See* C P CODE S 47 AND O 21, R 58 (1910) 2 M L J 860  
—O 21 R 58—Applicability—Personal decree in mortgage suit—Execution—Claim to attached property by person party to mortgage suit but not impleaded as party to personal decree proceedings—Procedural application

L J 305

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for suit

## CHEITIAN v RAJANGAM AIR 1940 Mad 172

—O 21 R 57 (NWP)—Default—Decree holder's refusal to proceed with execution application—If amounts to

The decree-holder's refusal to proceed with his execution application amounts to refusal as contemplated by O 21 R 57, C P Code

ABDUL HAKIM v ALI AKBAR

13 R Pesh 17

—O 21 R 57—Order commencing execution

Where subsequent to the dismissal of a claim under O 21 R 58 C P Code the attachment ceases within one year from the date of the order for whatever reason it is not necessary for the claimant to file a suit under O 21 R 63 and the order dismissing the claim is

58 C P Code the  
go into questions  
of the direct evidence  
after all merely

—O 21 R 57 b1 b8 and b3—Scope—Execution petition finally dismissed though not for default—Effect on attachment—Defeated claimant—If bound to sue under O 21 R 63—Fresh attachment—Claim—If barred by failure to file suit to set aside order on claim

—O 21 R 58 to 62—Inquiry—Scope of—Plea of benami—If open *See* C P CODE O 21 R 63

19 Pat 494

—O 21 R 58—Locus stands to object—Attachment in Co-operative Society—*See* 1939 D G Col 264 HIRA CO OPERATIVE CREDIT 42 P L R 225

d 64—Objection to sale by title acquired subsequent to setting Court *See* 1939 D G

MULKH RAJ

188 I C 529—12 B L J, 535

petition (*Wadsworth*)  
BAGHYATHAMMAL

changing decree-holder  
by village *See* C P  
1910

C P CODE (1908), O 21, R 62

C P CODE (1908), O 21, R 63

AMBICA PRASAD SANYAL v SOORAJMULL

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to such  
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to question mortgage See 1939 Dig Col 267 MISHRI  
LAL v BARIK 185 IC 727=12 R N 169

—O 21, R 63—Applicability—Order against—  
Order directing notification of mortgage and of decree  
holder's allegation of collusive character at time of sale  
—If against mortgagee—Suit on mortgage after one  
year—If barred See LIMITATION ACT ART 11  
53 L W 354=(1940) 2 M L J 402

—O 21 R 63—Burden of proof—Claim based on  
registered sale deed of attached property—Dismissal—  
Suit to set aside claim order—Onus of proving con-  
sideration and val dity

Where an order has been made rejecting a claim to  
attached property based on a registered sale deed  
obtained by the claimant it is not enough for the defeat  
ed claimant suing to set aside the claim order to pro-  
duce and prove a duly registered deed executed by the  
owner of the property He must show, in order to  
succeed in the suit that the sale in his favour was a

MANMAN J J) MAHOMED KASIM SAHIB v SUBRA-  
MANJAN CHETTIAR 190 IC 740=13 R M 417=  
1940 M W N 557=51 L W 31=  
A I R 1940 Mad 444

—O 21 R 63—Order dismissing claim for non  
prosecution—Finality See 1939 Dig Col 267 AMBICA  
PRASAD SANYAL v SOORAJMULL

#### tainability

An executing Court cannot go into the question  
as to whether a transaction is benami or not in  
summary proceedings under O 21 R 58, C P. Code

lessness of resisting a claim in summary proceedings and

—O 21 R 63—Scope of  
(Per Braund J)—O 21, R 63 C P Code does not  
well confer a right but only gives the creditor the op-  
portunity of enforcing whatever rights he has by a civil  
suit (Collister and Braund, JJ) PAREKH NATH  
PRASAD v SARJU PRASAD I L R (1940) All 542=  
190 L C 337=13 R A 177=  
1940 A W R (H C) 422=1940 A L J 470=  
A L R 1940 All 407

—O 21, R 63—Scope and effect of—Attachment  
of mortgaged property—Claim by mortgagee—Mort-  
gage upheld by Court—Order not impeached—Effect—  
Sale in execution—Purchaser in execution and pur-  
chaser from him—Right to impeach mortgage See 1939  
Dig Col 268 MAHALAKSHMI v SOMARAJU  
189 L C 17=13 R M 114

—O 21, R 63—Scope and effect—Attachment—  
Claim—Rejection—Attachment ceasing owing to dis-  
missal of execution petition—Failure to institute suit to

ASGHAR ALI v ISHAQ ALI I L R (1940) All 31=  
187 IC 383=12 R A 531=A I R 1940 All 72

—O 21, R 63—Suit under after auction sale—  
Decree-holder, if a necessary party

Where a suit is brought under O 21, R 63, C P  
Code, after the property had been sold in auction, the  
party to such a suit and it  
his absence (Gruer, J)  
1940 N L J 604

it under—Frame of—If to be  
See TRANSFER OF PRO

PARTY ACT (AS AMENDED IN 1929) S 53  
51 L W 608=(1940) 1 M L J 872

—O 21 R 63—Suit under—Nature of—Decree in  
—Effect on prior summary order—Dismissal of claim  
Suit under O 21, R 63  
their own costs—Costs  
executable See 1938  
ANJIPANT v GOVIND  
I L R (1940) Nag 519  
—Onus See 1939 Dig  
H DAS v INDRA CHAN  
I L R 871=12 R C 418  
Transfer of Property Act.

cessfully hope to resist a claim under O 21, R 58, C P | B 53—Suit under O 21, R 63 by creditor—If should

C. P. CODE (1908), O 21, R. 63

*be on behalf of the body of creditors—Absence of other creditors, when can be presumed—Onus.*

A creditor proceeding under O. 21, R. 63, C. P. Code, who does not know of the existence of other creditors is

there are no other creditors and that the plaintiff can

sue

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Until there is a definite order against the garnishee to pay under O 21, R. 63 (c) (1), C P Code, there is not

against the garnishee as

SHEERAZEE & REDDY

1871

A.I.R. 1940 Rang. 34

—O 21 R. 66—Order under—Nature of—Appeal  
See 1939 Dig., Col 271 SHYAMKANT LAL &  
RAMBHAI SINGH 71 C.L.J. 369

—O 21, R. 66—Procedure—Duty of Court—Maha  
constituted by collectorate—Partition out of number of  
villages in estate—Execution sale under final mortgage  
decree—Proclamation for sale in one lot at one single  
price—Priority—Judgment debtor giving separate  
valuation for each village and praying for sale in  
different lots—Duty of Court to accept

Under O 21, R. 66, C. P. Code, the executing Court  
has to insert in the sale proclamation the valuation given  
by the judgment-debtor, and that valuation has to be

C P. CODE (1908), O 21, R. 83

—O. 21, R. 66 (Lahore)—Sale proclamation—  
Value of property given by party—Duty of Court to  
include.

Under O 21, R. 66, C. P. Code, as amended by the  
Amendment upon the Court  
include the estimate of the  
given by either or, both the

J.) BARKAT RAM v

42 P.L.R. 401

A.I.R. 1910 Lah. 394

—O. 21, R. 66 (Patna)—Sale proclamation—

valuations placed on property by decree-  
by High Court in earlier proceeding—Such  
with consent of both parties—Judgment  
in complaint of irregularity.

e valuations placed on the property by the

—O 21, R. 69—Order of Court directing pro

commencing from 5th

12th after postponing it

See 1939 Dig., Col 272

D. v TARIT BHUSAN

I.C. 174=12 R.O. 417.

—O. 21, Rr. 71, 86 and 87—Scope—Default of  
purchaser in paying balance of sale price—Re sale—  
Application for—When to be made—Delay caused in re-  
sale—Deficit sale price—Liability of purchaser—Is  
affected—Right of decree holder to order against  
defaulting purchaser—Limitation Act, Art 181.

Where there has to be a re sale as the result of the  
default of the decree holder under O 21, R. 86, C P  
Code, the decree-holder has to apply for a re-sale,  
which under O 21, R. 87, C P. Code, has to be made  
after the issue of a fresh proclamation The Code  
contains no provision as to when the application for a  
re sale shall be made, the decree holder is therefore



C. P. CODE (1908), O. 21, R. 89

A purchaser of the property from the judgment debtor subsequent to the auction sale cannot maintain an appli-

O. P. CODE (1908), O. 21, R. 90

cant seeking to set aside a sale under O. 21 R. 90, C. P. Code, as amended in 1937, on the ground of material

judgment-debtor must not deposit the money under protest he cannot impose conditions (*Davis, J.C. and Weston, J.*) **RUGHNATH v HARIRAM**

**ILR (1940) Kar 360—AIR 1940 Sind 181**

—O. 21 R. 90—Applicability—Sale in execution

Estates Land Act. The rule is not made applicable to such sales by S. 192 of the Estates Land Act S. 132 of the Estates Land Act by making Ch VI of the Act applicable to the Revenue Court of any decree for arrears. It provides a complete Code of Procedure.

order after admission of application—Right of decree holder to apply for order of security

*Holding of sale on Friday during suspension of Court's sitting—Civl Rules and Orders, Chap 1, R. 1 (4)*

The holding of the sale between 12.30 and 2 P.M. on a Friday when the sitting of Court is sub-R. (4) of R. 1 of Chap 1 rules and orders issued by the Court, does not amount to material irregularity in the conduct of the sale.

**kram, JJ.) FATEH CHAND v AKIMUDDIN**  
**ILR (1940) 1 Cal 1188 IC 151=12 RC 654=44 CWN 109=**

**CLJ. 88—AIR 1940 Cal 265.**  
—Material irregularity—Permission ree holder—Condition subsequently holder must pay in cash half of

Material irregularity—Sale  
ty—Illegal sale—Court If  
e 1939 Dig, Col 276  
**187 IC 584=**  
**12 R.N. 290**

Appeal against order setting aside sale—Necessity to implead See 1939 Dig, Col 341 **BIRDICHAND v**

**302.**

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C P CODE (1908), O 21, R 84

under the attachment. See C P CODE S 64

52 L W 862 = (1940) 2 M L J 1038

O 21, R 84—Bid on behalf of temple—Failure

under the attachment. See C P CODE S 64

—O 21, R 84 and 71—Sale when

Deposit when to be made—'Forthwith',

Resale if can be held on same day See

273 LOKMAN v MOTILAL

—O 21, R 86 and 87—Re sale under—Applica

tion for—Limitation—Duty of decree holder—Limita

tion Act Art 181 See C P CODE O 21, R 84

—O 21, R 89—Construction—Application

under Rr 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

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Application under R 89—When deem

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Application under R 89—When deem

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Application under R 89—When deem

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drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

C. P. CODE (1908) O 21, R 89.

30 days of the date of sale it must be held to be barred

by limitation (Davis, J C and Weston, J) RUGH-

NATH v HARIRAM I L R (1940) Kar 360 =

A I R 1940 Sind 181.

—Payment under—

—Effect of—Court closed

—Effect of—Court closed

—Effect of—Court closed

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shareers of their right (Puranik J) MUNNALAL v

GOPILAL 1940 N L J 453 = A I R 1940 Nag 337

—O 21, R 89—Construction—Application

under Rr 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

under R 89 and 90—Competency—S

drawal of prayer for relief under

Application under R 89—When deem

Limitation

Act

Krishnaswami Iyengar, J—O 21, R 89 cannot

be construed as contemplation of payment in cash and in

—Effect of—Court closed

—Effect of—Court closed

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13 B M 21-51 L W 527 = 1940 M W N 379 =

A I R 1940 Mad 427 = (1940) 1 M L J 629 (F B).

—O 21 R 89 and O 32, R 3 (5) (Oudh)—Exe-

—Effect of—Court closed

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an application under it unless  
tion under R 90 has been  
also excludes an application already  
application is made under Rr 85  
quently the prayer for relief under  
the application under R 89 can be  
made only on the date on which  
under R 90 is abandoned And it

C P CODE (1908) O 21, R. 89

A purchaser of the property from the judgment debtor subsequent to the auction sale cannot maintain an application under O 21 R 89 C P Code, while the rule may be so construed as to recognise in the judgment debtor who has sold his property subsequent to the auction sale, a sufficient interest under the rule it does not follow that construed as to permit the subsequent to apply to the Court to set aside the

to enquire  
may get it  
sale it may  
judgment-d  
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Weston J

ILR (1940) Kar 360 = A.I.R. 1940 Sind 181

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Necessity

Y D 1940-20

C P CODE (1908), O 21, R 90

cant seeking to set aside a sale under O 21 R 90 C P Code, as amended in 1937 on the ground of material irregularity or fraud, must be given an opportunity of showing cause before an order is made against him requiring security before admitting the application. The

The holding of the sale between 12.30 and 2 p.m. when the sitting of Court is sub R. (4) of R. 1 of Chap 1 rules and orders issued by the Court does not amount to material irregularity in the conduct of the sale.

ILR (1940) FATEH CHAND v

material irregularity—Sale  
ty—Illegal sale—Court if  
1939 Dig Col 276  
187 LC 584 =  
12 R.N. 290

f decree

> Code  
to call  
ned to a  
t aside

O 21 R 90—Partes—Auction purchaser—  
Appeal against order setting aside sale—Necessity to  
implead See 1939 Dig Col 341 BIRDICHAND v  
GANPATRAO ILR (1940) Nag 302

O 21 R 90—Right to apply—Auction purcha  
chaser See 1939 Dig Col 277 ALL INDIA RAIL

High Court is only a rule of procedure and does not take away any substantive right. It is not necessary to put the party on terms and is not an order in the way of the applicant (Woot, Lachle, T. Marohar Lal and C. ILR (1940) UP 11)

## C P CODE (1908), O 21, R 80

GULAB SARKAR 19 Pat. 531=21 Pat L T. 294=  
188 I C 241=12 R P. 682=1940 A L J. 813=  
6 B R. 610=1940 P. W. N. 287=  
A R P 1010 B. 1010 C. 1010 D.

without title as against the share of minor members. The sale was not confirmed by the time when the minors objected that the sale did not affect their interest. There was no mutual understanding between the Court and the bidders as to what was being put to sale.

*Held*, that the sale should be set aside in its entirety and not only as to the share of the minors.

*sale*—Meaning of—Insolvent judgment debtor—Right

are not adversely affected by the sale of property that belonged to him before adjudication (*Panirang Row and Herwall, JJ*) MANTHIRI GOUNDAN v ARUNACHALA GOUNDAN. 51 L W 600=1940 M W N 462=  
A I R 1940 Mad 569=(1940) 1 M L J 711

—O. 21, R. 92—Confession made—Last day happen

It is not legal to pass an order under R 92 of O 21, if the day has elapsed from the date the 30th day is a holiday, only be made (*Burton, F C*)

—O 21, R. 91

—Power of Court

decree on prior mortgage—Paisne mortgagee purchasing part of mortgaged property not impleaded in suit—Application by latter to set aside sale under O 21, R. 89—Dismissal—Subsequent suit by him to redeem—If barred See C P CODE, S. 47

I L R (1940) Kar. 447

## C P. CODE (1908), O 21, R 103.

number of the house sold and entered in the sale certificate and to insist that he is now entitled to have the property of the exact description which he bought,

KISHORE

1820 A W L R (11 C) 1031

1940 O A. 969=1940 A L J. 762

—O 21, R. 97, 103—Dismissal of application under R. 97 of O. 21—Appealability—Scope of R 103 of O. 21

An order dismissing an application as barred by time is not an 'order made under Rr 98, 99 or 101' of O 21, but it is a decree hence appealable. from an order at from an order (*Braund, J.*)

BAHADUR KHAN v BARI TALA

(H C) 515=1940 O A. 937=

J 785=A I R 1940 All. 525.

Exercise of power under—Con-

dgment debtor—Meaning of.

KULSOONUNNISA v RAGHU

I L R (1940) All. 87=

1939 A L J 1160

—O. 21, R. 98—"Person other than the judgment-debtor"—Suit on mortgage against legitimate son of mortgagor—Plaintiff not aware of existence of illegiti-

defendant—Effect

than the judgment-

VYTHILINGAM

350=12 R M. 580.

—Execution of rent

on transferable hol

189 I O. 240=13 R P. 61=A I R 1940 Pat. 610.

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—O. 21, R. 103—Scope—Obstruction to delivery

C P CODE (1908), O 21, R 103

O P. CODE (1908), O 22, R 4

lap e of the period of limitation prescribed of adding or refusing to add is at the Court which would not be exercised to after the period of limitation except in special circumstances (*Sathe, J. M.*) GULAB v GIRDHARI 1940 A W R (R W) 192=10100 A 75-

an end to arbitration proceedings

the legal representative of a deceased party being brought on the record (*Afockett and Krishnaswami Aiyangar, J.J.*) VENKATACHELLAM v SURYANARAYANAMURTHY 1940 M W N 1083=52 L W 556= (1940) 2 M L J 520

—O 22—Applicability—Revisions before High Court See 1939 Dig Col 281 KAZIM HUSAIN v PEAREY LAL 15 Luck 26

—O 22—If inconsistent with S 50 of U P Encumbered Estates Act See U P ENCUMBERED ESTATES ACT, S 50 AND C P CODE O 22 1940 O A 518

—O 22 R 1—Suit for damages for malicious prosecution—Death of plaintiff after decree—Execution by legal representative—Permissibility See 1939 Dig, Col 282 SALIG RAM v CHARAN DAS I L R (1940) Lah 417=12 R L 329=185 I C 877

—O 22, R 3—Applicability and scope—Suit by Hindu—Death of plaintiff leaving sons and widow—Sons alone brought on record as legal representatives—Death of widow subsequently—Widow supposed to be alive on account of Hindu Women's Rights to Property Act—Sons not described as heirs of widow as well—Effect—If causes abatement of suit

There is no justification for enlarging the words of O 22 R 3, C P Code, so as to cover a case where all that is required is formal amendment of the record and not the addition of new parties. There is no justice in holding that a suit abates for want of parties when all parties interested are in fact before the Court. A person who is already a party cannot be made a party over

the different sued On its hat the record sued in more ourt to have that sort can e fact that the interest of the been properly shown on the order striking out the plea brought a suit in 1935 for party as reversioner to the e died on 1-2 1938 On

21-3-1938 an application was made for substitution and his three sons were brought on record as his legal representatives. Besides the sons, the plaintiff also left a widow who was, how-

the three sons, that she was not brought on the record and that on her death, the sons should have been made

Held, that assuming that the widow was an heir of should have been rs were already on them as her heirs the suit therefore Sen J) NARAN HRATLAL

1=190 I O 470= 13 R B 114=42 Bom L R 491= A I R 1940 Bom 259

—O 22 R 3 and 4—Applicability—Person appointed by Court under O 1, R 8 See 1939 Dg, Col 283 FAZAL RAHIM KHAN v HUSAINA

LLR (1940) Lah 199=188 I C 189= 12 R L 507=42 P L R 751

—O 22 R 3 and 9—Death of appellant—One only of his legal representatives brought on record with in time—Appeal if abates See 1939 Dig Col 283 UMRAO BEGUM v RAHMAT ILAHI 186 I C 77= 12 R L 351

—O 22, R 3, 4 and 11—Order that cross appeal has abated—If a decree and appealable See C P CODE S 2 (2) AND O 22 R 3 AND 11 I L R (1910) Nag 321

—O 22, R 3 and 11—Scope—If overriden by O 41, R 4 See C P CODE, O 41 R 4 1940 P W N 361=A I R 1940 Pat 516 (F B)

—O 22, R 4—Administration suit—Death of one of defendant—Abatement of suit

It not uncommonly happens in a suit for administration that for one reason or another a particular interest is not represented before decree but is either provided for by the decree or is asserted at a later stage under the decree or is given effect by a party being permitted to attend certain accounts and enquiries so as to be bound by the result. A Mahomedan brought a suit against his co-heirs for administration. One of the defendants who had the same interest and was in same position as that of the plaintiff died and ro

## C P CODE (1908) O 22, R 4

cation was made by the plaintiff to bring his heir on the record

*Held*, that the suit for administration did not come to an end by reason of abatement as defendant (*Sir George Rankin TAVEBALLY v SAFIABAI*) A

—O 22, R 4—*Appeal by a*  
*Encumbered Estates Act—Death*  
*pendents—Legal representative no*  
*abates in toto*

Where in an appeal by an applicant under the U P Encumbered Estates Act some of the creditor respon-

## C P CODE (1908), O 22, R 4

result in the abatement of the appeal by reason of the omission to implead or substitute their heirs within the time limited. It is for the use to decide whether it will g respondents to continue to whether it will insist on the respondents being maintained the respondents (*Harries, all, f*) *HARSAMUKHI DASI*

*v* AGADHU MOHAPATRA 18 Pat. 723=  
188 I C 838=6 B R 746=13 R P. 43=  
21 Pat. L T. 637=A. I R. 1940 Pat. 180.

—O 22, Rr 4 and 9—*Application meant to be*

—O 22, R 4—*Appli*

*counter claim—Death of plaintiff in suit—Heirs of plaintiff coming on record and amending plaint—Duty to amend written statement—Liability of defendants counter-claiming—Abatement*

A counter-claim stands in the same category as a cross suit for the purposes of the C P Code, and counter-claim would abate by reason of the

written statement. If the defendant who claims wants to amend the title of his claim and his written statement, it is l

—O 22 R 4—*Applicability—Mortgage suit—Preliminary decree—Subsequent death of mortgagor—Heirs not impleaded—Abatement—Rule—O 22*

O 22 R 4, C. P. Code, does not apply to a which a preliminary decree has been passed. A mortgage suit, the mortgagor dies after the pre decree, and his heirs are not brought on th within the time limited, there is no abatement

—O 22 R 4—*Contest by some of several defendants—Presumption as to knowledge of rest—If applies to deceased defendant—Mandatory character of O 22, R 4*

Where there are several defendants to a case, only some of whom are contesting the case actively the knowledge of the silent defendants may be presumed from the other co defendants are actively contesting the ngs. But this presumption can hardly apply to d defendant. Neither his knowledge nor that rs can be presumed from the fact that some of r defendants, who are alive, are contesting the

—O 22 Rr 4 and 11—*Joint interest—Relief claimed not separate but joint as against all respondents—Death of one respondent—Failure to add his legal*

also as against the remaining respondents inasmuch as

—O 22, Rr 4 and 11—*Joint relief against respondents—Death of one of them—Failure to add heir*

or appeal instituted or on behalf of numerous under O 1, R. 8, C P Code, where certain

1840 U A 710  
—O 22, Rr 4 and 11—*Tests of abatement* *Sir*  
*g. Col 285 DHANDEI KUER v PATNA*  
I.L.R. (1939) All 921=185 I C 649=  
12 R A 342

## C P CODE (1908) O 22, R 5

—O 22 R 5—Scope and effect—Death of appellant—Application for substitution by one heir—Notice to other heirs—Latter raising no objection—Order of substitution—Finality—If can be challenged

Where the appellant in an appeal dies and one of his heirs is, on his application, substituted as the legal representative of the deceased appellant after notice to the other heirs and without any objection on their part, the question so far as the appeal is concerned, is final and cannot be re-opened; and it must be held to have been constructively decided that the substituted heir is the legal representative of the deceased and competent to prosecute the appeal in that capacity

*Chatterji, J.*—Under O 22, R 5, C P Code, the question as to who is the legal representative has to be decided, and the person substituted shall, for the purpose of the suit or appeal, be deemed to be his legal representative. An *ex parte* order is as much binding as a contested order and the order of substitution cannot be challenged by the other heirs in the suit or appeal (*Faiz Ali and Chatterji, JJ.*) **JYOTI PRASAD SINGH DEO BAHADUR v SAMUEL HENRY SEDDON**

19 Pat 433—A.I.R. 1910 Pat 516

—O 22, R 6—Applicability—Mortgage suit—Death of mortgagor after arguments—Judgment pronounced on day of death—Decree passed later—If bad—Abatement *See* C P CODE, O 22 R 4

42 Bom.L.R. 663

by revere fresh s 285

Suit n Col 2

respondents—Legal representative not added—Heirs served and competent to attend to appeal—Appeal if abates

Where one of four brothers, respondents in an appeal dies and his legal representative is not brought on record but the other three have been served and are quite competent to look after the appeal the appeal need not necessarily abate (*Mehla S M and Harper J M*)

opposite party

Mere ignorance of death of a respondent is not a sufficient cause within the meaning of O 22, R 9, which would entitle an appellant to ask for setting aside an abatement (*Thomas C J and Zia ul-Hasan J*)

## C P CODE (1908), O 22, R 10

by plaintiff pending appeal—Failure of assignee to get himself substituted or brought on record—Appeal decided against plaintiff—Second appeal by latter—Death of plaintiff pending second appeal—Application by assignee for substitution—Maintainability *See* 1939 Dig, Col 286 **DIRGHAYU PANDE v KISHORE KUER**

189 I.C. 751—6 B.R. 855—13 E.P. 131—

21 Pat.L.T. 81—A.I.R. 1910 Pat 177

—O 22, R 9—“Sufficient cause”—Appellant living elsewhere than in village of respondents—Ignorance of death—Sufficiency *See* 1939 Dig., Col 286 **RAM KANBIJAYA PRASAD SINGH v MADHO TURHA**

6 B.R. 187—185 I.C. 498—

12 E.P. 375

—O 22 R 10 and 11—Applicability and scope—Final decree for partition allotting suit property to a person during pendency of suit in respect of such property—Application by such party to come on record during pendency of appeal from decree in suit—Maintainability

Under O 22, R 10 and 11, unless the assignment, creation or devolution referred to in R 10 has occurred during the pendency of the appeal the rules would not entitle a person to be impleaded as a party in the appeal where such party has acquired the suit property as his separate and absolute property by virtue of a partition decree in a suit during the pendency of the suit and before the filing of the appeal, it cannot be said that he

52 L.W. 357—A.I.R. 1910 Mad 876—  
(1940) 2 M.L.J. 349

—O 22, R 10—Applicability to execution proceed

*See* O 22, R 10 is applicable to execution proceedings R 12 of O 22 does not exclude execution proceedings from the operation of R 10 (*Agarwala and Rowland*)

*See* **ADODHYA LAL MAHASETH v BRIJ KISHORE**  
186 I.C. 786—12 E.P. 529—6 B.R. 393—  
A.I.R. 1940 Pat 615

22, R 10 and 11—Assignment pendente lite—Rights of assignee. *See* 1939 Dig., Col. 287

66 I.A. 210—  
S.A.R. (P.C.) 295—  
W.N. 19 (P.C.)

ation of interest  
tigation—Litigant  
f of properties as  
ving him right to  
dings in suits—

ON  
(1940) 2 M.L.J. 337.

—O 22, R 10—Discretion of Court—Suit under S 92 for removing Mohant and framing scheme—Mohant abdicating and installing X as Mohant pendente lite—If may be

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ect to a math  
hat the

## C P CODE (1908), O 22, R 10

a new Mohant should be appointed and a scheme framed. After the institution of the suit, the defendant abdicated and installed one X as the Mohant of the math X applied under O 22, R 10, C P Code to be substituted in the place of the Mohant

Held, that in circumstances like these a proper exercise of discretion by Court of substitution of X as a party

Held, further, that the devolution did not constitute such a devolution of an interest in the subject matter of the suit as would justify action under O 22 R 10 (*Henderson and Sen, JJ*) RATAN NARAYAN GIRI v ASHUTOSH NUNDY

189 I C 780=13 RC 115=44 CWN 690=

A I R 1940 Cal 383

—O 22 R 10—Order under—Competency to pass after disposal of case

An order under O 22, R 10 can only be passed if the original case is still pending. If the case is disposed of, no order under R 10 of (*Harper, S M and Sathe, J A*) SEN 1940 E D 402=1

—O 22 R 10 and 11—Scope—If control—Mortgage pending suit—Decree—Appeal by

appeals from the operation of R 8 of that order, though An app from ar templat order i apply DISH B

—O 22 R 12—Scope and effect—Execution proceedings if abate—Procedure to be followed in case of decree-holder's death See 1938 Dig, Col 354 TEJRAJ v RAMPYARI

—O 23—Applic. Land Revenue Act 23—APPLICABILITY

—O 23 R 1—1 a defendant—Permis —Reimpeading of against him, if maint BALMAKUND v PRAJ A A

—O 23 R 1 (2) (a) and (b)—Construction and it is Formal debt — Sufficient grounds—Meaning of it is withdrawal on ground of defect of substance—Permissibility—Order allowing withdrawal—Jurisdiction —Reason—C P Code S 115

The two clauses of sub-R (2) of R 1 of O 23, C P Code, must be read together Cl (a) of sub-R (2) of R 1

fail by reason of some formal defect whereas the

## C P CODE (1908), O 23, R 33

grounds contemplated in Cl (b) need not necessarily be fatal to the suit, but must be analogous to a formal defect The expression "formal" defect must be given a wide and literal meaning and must be deemed to connote every kind of defect which does not affect the

allows a suit to be withdrawn on the ground of defect of substance arising out of the plaintiff's inability to prove the title on which the claim is based, the Court acts without jurisdiction and its order can be corrected in revision under S 115, C P Code (*Wadia Divalia and Lokur, JJ*) RAM RAO BHAGWANTRAO v BABU APPANA I L R (1940) Bom 299=

187 I C 409=12 R B 413= 42 Bom L R 143=A I R 1940 Bom 121 (F B).

—O 23, R 1 (2) (b)—"Sufficient grounds"—

ds" referred to in O 23 R 1 be ejusdem generis with the R 2 (a) i.e. there must be

23, R 2—Applicability—Suit in time in proper Court—Amendment reducing rate of interest—

it impossible for the Court to entertain it O 23, R 1 and 2 C P Code apply to a case where the plaintiff on discovering that his suit must fail either by reason of

23, R 1 (2) and the Limitation Act C and Weston, J)

25=190 I C 328= 13 R B 10=A I R 1940 Sind 125

—O 23, R 2—Permission to bring fresh suit granted on condition of plaintiff paying costs before such suit—Second suit instituted without payment of costs—If void ab initio See 1939 Dig, Col 289 MA SAN MYINT v U TUN SEIN

187 I C 711=12 R B 335 —O 23 R 3—Compromise petition—Duty of it to pass decree in accordance with its terms —tries to a suit can compromise their differences on terms they please and they can include in those any matters, whether subject matter of the suit or not, and under the provisions of O 23 R 3, the

## C P CODE (1908), O 23 R 3

Court is compelled to pass a decree in accordance with the terms of the petition. It is not open to the Court to select some terms of the petition and pass a decree in

—O 23 R 3—*Compromise—Recording of—What amounts to—Decree directing effect to be given to compromise, without setting out the text of it*

## C P CODE (1908), O 30 R 1

from Court house—Refusal of commission—Propriety of See C P CODE 5 115 21 Pat LT 187.  
—O 26, R 8 (a)—*Sick witness—Evidence taken on commission—If inadmissible*

Where a witness is examined on commission on the ground that he is ill the case falls within the exception referred to in Cl (a) of R 8 of O 26, and the evidence so taken on commission can therefore be taken into account (*Arma, J*) SNEHALATA DEVI v JANAR DHAN PRASAD SINGH 21 Pat LT 340—  
A T D 1010 Pat 404

1910 O L B 242—6 B R 559—12 R P U 156—  
52 L W 17—1 L R (1910) Kar (P C) 149—

1910 M W N 672—42 Bom L R 697—

42 P L R 772—1940 A W R (P C) 66—

1940 O A 307—1940 O W N 338—

A I R 1940 P C 70—(1910) 2 M L J. 769 (P C)

—O 23, R 3—Compromise—When embodied in the decree—Omission in the operative part of the decree—Relief in respect of the omitted portion—Execution or suit See 1939 Dig, Col 290 SAT NARAIN v CHANDRA MOHAN A I R 1940 Oudh 27

—O 23 R 3—Inquiry—Scope—Question of consideration—Relevancy of See COMPROMISE—CONSENT DECREE 6 B R 767—189 IC 232

—O 23, R 3—“Lawful agreement”—*Meaning of—Duty of Court before recording compromise*

In an application to record a compromise under O 23, R 3 C P Code, the Court has to be satisfied on two points first that there was an

—O 30—Decree against firm—Appeal by one of the members—Competency See 1939 Dig Col 292, MAHADEO PRASAD v KUNJI LAL, 186 IC 811—  
12 R A 452—A I R 1940 All 81

—O 30 R 1—*Applicability—Joint Hindu family trading firm—Punjab*

By virtue of the Explanation added to R 1 of O 30 C P Code the provisions of that rule apply, in the Punjab to joint Hindu family trading firms on partnerships and persons who are members of such a family trading business can sue and be sued in the name of the firm as provided in R 1 and subject to the limitations laid down in other rules of O 30 (*Tek Chand and Abdul Rashid J J*) ATMA RAM v MIAN UMAR ALI 190 IC 78—13 R L 124—  
42 P L R 278—A I R 1940 Lah 256

—O 30 R 1—*Applicability—Joint Hindu family firm—Punjab*

By virtue of the Explanation added by the Punjab

For this purpose no inquiry is necessary because the terms of the agreement themselves will show the defect (*Ka*)

Co, Ltd v KAILA I L R. (1) 12

—O 23, R 3—

—Subsequent adjust 1939 Dig, Col 290 RAJA RAM v ALLAHABAD BANK, LTD 185 IC 75—12 R L 263 (2)

—O 26—*Appointment of Commissioners and fixing of remuneration—Nature of the acts done—Interference by High Court*

A Court acts judicially and not administratively when

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*

—O 30 R 1—*Nature of provision*





C P. CODE (1938), O 32 R 3

WIDOW

O 3

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O 32 R 3—Powers and duration of guardian  
 Appeal filed by third person—Order of dismissal  
 Effect  
 SOMAS

circum  
 certificate

The  
 (1) of R 4 of O 32 C. P. Code need not necessarily  
 be in writing and an oral granting of leave  
 inferred from the circumstances of particular  
 Where the existence of a certificated guardian

C P CODE (1908), O 32, R 7.

consent of guardian See 1939 Dig, Col 296 NANA  
 NAMDEO v DALPAT SUPADU  
 186 IC 578—12 R.R. 354—AIR 1940 Bom 33

obtained by a guardian *ad litem* or next friend before

O 32, Rr 5 and 7 (2)—Scope—Compromise by  
 guardian without leave of Court—Decree based on—If  
 nullity—Minor represented by guardian—Absence of  
 formal order of appointment of guardian—Effect—  
 Decree based on agreement by such guardian—If

PRASAD

19 Pat 343—1940 PWN 514—  
 AIR 1940 Pat 663

O 32 R 7—Reference to arbitration by guardian—  
 Leave of Court—Necessity for

Every agreement by the guardian or next friend of a  
 to the leave of the  
 arbitration is an agree-  
 rule and therefore  
 case of a minor to  
 MAR GUL V. ABDUL  
 1—12 R Pesh 35—  
 LR 1940 Pesh. 12

O 32, Rr 6 and 7—Natural guardian appointed  
 as guardian *ad litem*—Powers—Limitations See 1939  
 Dig, Col 295 SOMARENDRA NATH MITTER v  
 ASHUTOSH ROY 186 IC 72—12 R.C. 457  
 O 32, Rr 6 (1) (b) and 7 (1)—Decree in  
 favour of minor—Assignment by guardian *ad litem*  
 without leave of Court—Validity—Right of judgment  
 debtor to attack assignment See 1939 Dig, Col 295

O 32 R 7—Scope—Arbitration—Agreement  
 of reference by guardian *ad litem* without leave of Court  
 Validity—Option to revise—If available to parties  
 other than minor—Guardian agreeing to reference—  
 Right to impeach validity on behalf of minor

If a guardian *ad litem* of a minor defendant enters  
 into an agreement of reference to arbitration on behalf  
 of the minor without obtaining the leave of the Court

## C P CODE (1908), O 32, R 7

by the same guardian or next friend who agreed to the reference resulting in the award (*Abdul Rahman, J*)  
 RAMANATHAN CHETTIAR v KUMARAPPA CHETTIAR  
 1940 M.W.N. 191=A.I.R. 1940 Mad 650  
 —O 32 R 7(1)—Leave of Court—When to be given—Real meaning of R 7

It would appear that the parties must in fact always enter into the compromise before any express leave can be obtained. The Court need not always grant that leave but where it is clearly in the interest of the minor to do so, the Court will, short of alleged fraud, always exercise its discretion by granting that leave. The real meaning of R 7 of O 32 is that the express leave of the Court must be obtained before the compromise entered into becomes a valid one for future eventualities. The result of this is that subsequent express leave of the Court granted will validate a compromise entered into on behalf of a minor (*Davies*) SUTINDAR SINGH v BHAG CHAND SONI 1940 A.M.L.J. 25

—O 32 R 7(2)—Applicability and scope  
 O 32, R 7 applies to proceedings  
 Land Revenue Act. The absence of reference to a compromise makes it only void as is clear from Cl (2) of R 7  
 RAVI UJAGIR v RAM DULAR

shall be voidable against all parties other than the minor. The meaning of this final phrase is that the

major on date of suit—Procedure—Duty of dismissal suit—Opportunity to continue suit—given

O 22, R. 12, C P Code does not contemplate the giving of an opportunity to a person who is not on record to continue the suit. The rules apply to cases where a suit has been filed by a minor who becomes a major during the course of the trial. A suit was filed

—O 32, Rr. 12 and 14—Minor—suit by  
 only do so on submitting to an order to pay the

## O P CODE (1908), O 33, R 2.

payment of costs can be made against the next friend after the minor has attained majority.  
 (Beaumont, C.J. and Kania, J.) RATANCHAND DHULAJI v JASRAJ KASTURCHAND  
 I.L.R. (1940) Bom. 135=186 I.C. 597=  
 12 R.B. 349=41 Bom.L.R. 1296=  
 A.I.R. 1940 Bom 58

—O 33—Leave to sue in forma pauperis—When revisable See C P CODE, S 115—LEAVE TO SUE IN FORMA PAUPERIS 1940 O.W.N. 259=

1940 O.L.B. 118 (F.B.)  
 —O 33 R. 1—Order on application under—Revision if lies and when can succeed See C P CODE, S 115 AND O 33, R 1—LEAVE TO SUE AS PAUPER. 1940 O.A. 501=1940 O.W.N. 626

—O 33, R 1, Explanation—Construction—Plaintiff having saleable interest in some items of property involved in suit—Right to obtain leave to sue as pauper

The comma after the word "suit" in the explanation

raised (*Hortwell, J*) PAPPAMMAL v SEETHAMMAL.  
 1940 M.W.N. 489=51 L.W. 633=  
 A.I.R. 1940 Mad 754=(1940) 1 M.L.J. 813.

—O 33 R 1, Explanation—Subject matter of suit in possession of applicant—Court's duty to take into

MAST SARDAR BEGUM 190 I.C. 572=13 B.L. 181=  
 42 P.L.E. 266=A.I.R. 1940 Lah 310

—O 33, R 2 and 3 149—Application for leave to sue in forma pauperis—Time for payment of Court

plant. On objection raised by the defendant (respondent) directed  
 him  
 1928,  
 dment  
 e suit  
 pay  
 cation  
 for leave to continue the suit as a pauper, the petitioner

C P. CODE (1908), O 33, R. 2.

not complied with the order of the Court requiring him

refusing leave

*Pet Division Bench.*—Where a plaintiff sues in a representative capacity, as manager or *sarburakar* of an institution, unless it is shown that he is in possession of property belonging to the institution sufficient to enable him to pay the court fee prescribed by law for the suit, he must be allowed to sue *in forma pauperis*. It is his own. be k and MAN

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*barred*—Refusal contemplated by R. 15.  
The rejection of an application under O 33, R. 5,

effect debarring a subsequent application, is the one that is provided for in R. 7 (*Bennet and Verma, Jf.*)

KRISHNA KUMAR v. RADHELAL.

—O 33, R. 5(d)—Application by benamidar—If barred.

O P. CODE (1908), O 33, R. 7.

for leave to sue *in forma pauperis* is filed. (*Nasim Ali*

interest acquired must be subsisting and the agreement operative and not rescinded and the claim thereunder not renounced. If an applicant for leave to appeal *in forma pauperis* has by agreement assigned his interest or part thereof in the entire assets (the subject matter of the

—O 33, Rr. 6 and 7—Application for leave to sue as pauper—Report of Tahsildar that applicant is "warded by Collector performing functions of Pleader—Application opposed by Governor appearing for defendant Secretary of State—jurisdiction of Court to make further enquiry. A report of a Tahsildar to the effect that an applicant for permission to sue *in forma pauperis* is a pauper

HASAN DIN v. SECRETARY OF STATE FOR INDIA.  
12 B.L. 442—187 I.C. 134.

—O 33, Rr. 6 and 7—Decision as to pauperism—Court, if it can go into merits of the case.

oper that a Court in deciding as to whether a plaintiff is entitled to sue as a pauper or into consideration the weakness of the plaintiff's case, the strength or weakness of the case must necessarily be left for the

12 B.L. 442—187 I.C. 134.  
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## C P CODE (1908), O 33, R 9

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A 111 1940 A 11 251

—O 33, R 9—*Procedure—Application to dispauper plaintiff—Time for disposal—Order dispaupering plaintiff after judgment in suit and along with disposal of suit—Propriety*

The court fee payable in a case is the court fee

in part—Only for payment of whole court fee by defendant—*Propriety*

The court fee payable in a case is the court fee leviable upon the plaint. Where the plaintiff in a suit filed as a pauper succeeds only in part, there is nothing improper in the trial Court ordering the defendant to pay the whole court fee, if the Court thought that it was a proper order. If the defendant thought that order unjust, he could appeal against that portion of the order.

JEHAN

—O 34—*Applicability to charges created by decrees*

## C P CODE (1908), O 34, R 4.

entirely. (Stone, C J and Bose, J) GIRDHAR v MOTILAL CHAMPALAL FIRM 1940 N L J 151

—O 34 R 1 and U P Encumbered Estates Act R 6—O 34, R 1 if applies to proceedings under Encumbered Estates Act—Persons interested in mortgage, subject-matter of proceedings under the Encumbered Estates Act—If can be made parties

It is doubtful whether it is contemplated by the Encumbered Estates Act that the provisions of R 1 of

to proceedings under mortgage is the subject-matter of the U P Encumbered Estates Act—Inconsistency with the persons interested parties to the case

(1) DWARKA NATH v. O 76=13 R O 106=

—O mortgage suit claiming title independently of mortgagor—Duty to set up his paramount title—S 11, Expl 4

Where the defendants to a mortgage suit claim under a title quite independent of the mortgagors that title cannot be properly brought in issue in a suit based upon

the proper parties are the purchasers of the property. There is no difference that it is the person who claims personal

title and who is joined as interested in the equity of redemption. The defendant is not bound to raise a paramount title which is not impugned and which he did not even get from the mortgagors nor is he bound under S 11, Expl 4, C P Code, to raise the question as it lies outside the scope and nature of the suit.

(Dusit, J C) MATOMAL JHANGIMAL v BHANWARMAL BADOMAL I L R (1940) Kar 302=

190 I C 409=13 R S 79=A I R 1940 Sind 103

—O 34 R 1—Scope and effect of—Suit on first mortgage—Failure to implead second mortgagee—Effect—If enlarges rights of latter or entitles him to

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—O 34 R 1—Scope—Prior mortgage—Suit on mortgagee purchaser—Decree mortgagee—Effect—Right of redemption See C P CODE, I L R (1940) Kar 447

MAHOMED ABDUL SHAKOOR 15 Luck 399=

C P CODE (1908) O 34 R 4

C P CODE (1908), O 34, R 5

HUSAIN v BALLABH DAS

15 Luck 95=

AIR 1940 Oudh 90

—O 34 R 4—Interest from suit till redemption

—Rate of—Right of mortgagee

Mortgagee is entitled to claim interest from the date of suit till redemption

AIR 1940 La

—O 34 R 4—

'Lahan gahan'

Scope and ground

Court

In the case of a *lahan gahan* mortgage, the Court can pass a decree either for foreclosure or for sale. Where the interest under the mortgage is not specified, where it was allowed to accrue for a long number of years, it was held that the exercise of the Court's discretion was proper. (Stone C J and Bose, J.)

RAO 190 I C

—O 34 R 4—Mortgage

—Suit on—Form of decree

TION OF LAND ACT S 16

—O 34 R 4—Preliminary

adjustment out of Court—1

1939 Dig, Col 302

—O 34 R 5—S

Mortgagee purchasing

sale from mortgagor after preliminary decree—If

operates as satisfaction of or payment under decree—See

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

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L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

L. 1939 Dig, Col 302

C P Code, subsequent

prior mortgage is entitled at least to redeem the plaintiff

or to receive his own mortgage money out of the surplus

sale proceeds remaining after satisfaction of the plaintiff's

claim.

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claim.

C. P. CODE (1908), O. 33, R. 9.

**O 33, R. 9—Procedure—Application to dis-  
paupe plaintiff—Time for disposal—Order dispauper-  
ing plaintiff after judgment in suit and along with dis-  
posal of suit—Propriety**

The practice of disposing of an application to dis-  
paupe a pauper plaintiff along with the judgment itself  
and after delivery of judgment in the suit is one that

filed as a pauper succeeds only in part, there is nothing  
improper in the trial Court ordering the defendant to  
pay the whole court fee, if the Court thought that it  
was a proper order. If the defendant thought that

**O 33, R. 15—Construction  
tion as to payment of costs—Manda  
Non-compliance—If affects jurisdic-**

**O. 34—Applicability to charges created by  
decree.**

C. P. CODE (1908), O. 34, R. 4.

and Bose, J.) GIRDHAR L.  
FIRM 1940 N.L.J. 151.  
**U. P. Encumbered Estates  
if applies to proceedings under  
Encumbered Estates Act—Persons interested in mort-  
gage, subject-matter of proceedings under the Encum-  
bered Estates Act—If can be made parties.**

It is doubtful whether it is contemplated by the En-  
cumbered Estates Act that the provisions of R. 1 of  
O 34, C. P. Code, should apply to proceedings under  
that Act. But in a case where a mortgage is the subject-

**mortgage suit claiming title independently of mortgagor  
—Duty to set up his paramount title—S. 11, Expl. 4.**

Where the defendants to a mortgage suit claim under  
a title quite independent of the mortgagors that title  
properly brought in issue in a suit based upon  
to which the only proper parties are the  
and mortgagees and the purchasers of the

personal  
equity of  
to raise a  
which he  
he bound  
question  
the scope and nature of the suit.  
MATOMAL JHANGIMAL v. BHANWAR-  
I L B. (1940) Kar. 302 =  
3-13 R S 79 = A.I.R. 1940 Sind 103

1—Scope and effect of—Suit on first  
mortgage—Failure to implead second mortgagee—  
Effect—If enlarges rights of latter or entitles him to

governed by Art. 135. (Tyabji, J.) JASRAJ FAOOJI  
A Y D 1940 Sind 105

**O. 34, Rr. 4, 6 and S 48—Compromise mort-  
gage decree—Preliminary and final decree and later a  
personal decree, if could be passed—Limitation under  
S. 48—Starting point. See 1939 Dig, Col. 301. BUNYAD**

**parties—Effect of.**

A mortgage is indivisible and if all the parties entitled  
to a share in the money due on the mortgage are not  
upon the record, the suit must be dismissed in its

C P. CODE (1908), O. 34, E 5.

**15 Luck 95=**

plaintiff to pay the amount personally or give a right to the defendant to recover the amount otherwise than by a sale of the property in suit. To be able to do so, a further step under O. 34, R. 6 was necessary. The decree was not a personal decree and did not permit execution on the footing against other property of the plaintiff. (*Kama, J.*) GURUPADAPPA MALLAPPA v.

—O 34, R 4—Interest from suit till redemption  
—Rate of—Right of mortgagee

Mortgagee is entitled to claim interest from the date of suit till the date for redemption at the rate fixed in the mortgage deed as till the period for redemption has expired the matter remains in contract and the interest has to be paid. \* \* \*

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Rashid, 11)

— O 34, E  
'Lahan gahan' -

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the plaintiff  
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WHERE IT WAS ALLOWED TO ACCUMULATE FOR A PERIOD OF

entitled to apply for a license certificate for sale in the

1939 reg. - Vol 302

—O 34, R 5—S  
Mortgagee purchasing  
sale from mortgagor after preliminary decree—11

on final decree  
BHOLANATH  
186 IC 215-  
12 RC 455.  
—O. 34 R 5 and O 22 R 4—*Death of  
and his  
that pro-  
ved at the*

vender—Charge in favour of the vender declared—Time for payment fixed and vend. amount by sale in default of to third party—V'endor's reg. property of vendee—*Discre.*

the legal representatives to plead that the property  
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without  
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ly to the

It is not in dispute that the defendant is not a member of the defendant's family.

—O. 34. R. 5 (3)—Execution of decree—



C P CODE (1908) O 34, R 6

subject to certain exceptions in the case of a *bona fide* purchaser of the mortgaged properties (*Edgley, J*) MURARI RAM DAS v RASIK BHADRA

I L R (1939) 2 Cal 455=186 I C 1  
12 RC 533=A I R 1940 Cal

—O 34 R 6—Applicability—Mortgage

decree against the mortgagor

*Held*, that inasmuch as the mortgaged property directed to be sold by the decree had ceased to be avail-

then shown to have been exhausted or to be otherwise available (*Agarwala, J*) GANESWAR PARIDA v HARISH CHANDRA DUTTA

6 Cut LT 37=  
A I R 1940 Pat 616  
—O 34 R 10—Scope—Retrospective operation—  
Rights apart from preliminary decree—If affected. *See*  
1939 Dig, Col 303 DURAISWAMI PILLAI v VENKATA  
REDDY A I R 1940 Mad 283

C P CODE (1908), O 34, R 15

same transaction—Suit for rent under lease—Sale of equity of redemption—Bar of *See* 1939 Dig, Col 304

subsequently bring a suit to bring that immovable property to sale in satisfaction of his decree. A chargee can not, on obtaining a money decree, execute that decree

J) BANK OF INDIA v. ...

ring charge—Sale of, in execution of decree for arrears payable in respect of sum charged—Liability in respect of future payments—If extin-

guished  
Identical with a mort-  
remedy is available,  
of a charge is not  
suit for sale on the  
The general principle  
he auction purchaser  
mortgage may apply  
e because, by reason  
harge would usually  
sale proceeds or by  
under O 34, R 6,  
a recurring charge  
charged property  
a decree for arrears  
sum charged, the  
re payments would  
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ee for arrears which  
In such a case the  
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—O 34, R 14—Applicability—Mortgage

ASHI MUKHI

1 - 833=12 RC 528=44 C W N 240=  
A I R 1940 Cal 60

O 34, R 15—Sale of charged property  
preliminary decree for sale—Irregularity  
e in execution of a decree in a suit to  
a charge the charged property is sold  
there being any preliminary decree for

C P CODE (1938) O 35, R 5

sale as an ordinary mortgage suit, this can be regarded only as an irregularity (*Idolry J*)  
*JHANNANA SATHI v. SATHI MUKHI*  
 186 I.C. 233=12 R.C. 578-44 C.W.N. 240=  
 A.I.R. 1940 Cal. 60

—O 35, R 5—*Inter-pleader suit by tenant against landlord and stranger for trespass*—*See note*  
 —*See note*

S. 116 of the Transfer of Property Act prevents a tenant from denying the title of his landlord at the commencement of his tenancy, and the tenant cannot therefore bring a suit in which a claim is made against his landlord's title at that time is to be limited. In order therefore that a tenant may maintain an interpleader suit the claim of the party other than the landlord must be consistent with the title of the landlord at the commencement of the tenancy in question (*Benom & Brothers, J*)  
*YASHWANT HIRAJI v. SADASHIV GOVIND*  
 42 Bom.L.R. 181—A.I.R. 1940 Bom. 414

—O 35, R 1—*Interpleader injunction—For party order*—Will agree to give undertaking to indemnify *See 1939 D.C. Cal. 306* MAHMO RAO NARAYAN RAO v. SAIDU TUKARAM A.I.R. 1940 Nag. 45

—O 35, R 2—*Suit under the appearance of defendant at that time is to be limited*

Where between the dates of attachment before judgment and the decree in a suit, another decree-holder against the same judgment-debtor attaches in the interval the same property of the judgment-debtor, the attachment before judgment though earlier in point of time does not confer any priority the later attachment (*Hamilton, J*)  
*PRASAD & SEETLA PRASAD TEWARI*  
 15 Luck 287=185 I.C. 301=12 R.O. 209  
 1939 A.W.R. (C.C.) 320=1939 O.W.N.  
 A.I.R. 1940 O.W.N.

—O 39—*Powers exercisable under O. 39*—those under Ss 12 and 43, Guardian and Act—*Distinction* *See GUARDIAN AND WARDS ACT, Ss 12 and 43 AND C P CODE, O 39*

—O 39 and S 151—*Powers of Court apart from O 39*—*In forma pauperis applicant praying for injunction before question of pauperism is*  
*jurisdiction of Court to grant prayer*

Apart altogether from O 39, C P Code has ample jurisdiction to pass an order providing the protection and security of the property which is the subject matter of the litigation. Where an

C P CODE (1938) O 40, R 1

12 R.A. 570=1910 A.W.R. (H.C.) 74=  
 1910 A.L.J. 81—A.I.R. 1910 All. 185

—O 39, R 1—*Application under—Municipality*  
*Preventing the grant of letters of administration*  
*Inherent jurisdiction of High Courts* *See 1939 D.C. Cal. 306* STANLEY ALSTON CARDIGAN MARTIN  
 In the goods of 187 I.C. 220=12 R.C. 622

—O 39, R 1—*Consent to the application of previous application—If can go behind its order* *See 1939 D.C. Cal. 306* JIHAR DAS v. FIRM OF JIHAR DAS & BOKHAN  
 197 I.C. 304=12 R.L. 450=  
 A.I.R. 1940 Lab. 39

—O 39, R 1—*Defendant firm adopting name similar to that of plaintiff's firm—Temporary injunction*  
*If justified* *See 1939 D.C. Cal. 306* JIHAR DAS v. FIRM OF JIHAR DAS & BOKHAN

187 I.C. 304=12 R.L. 450—A.I.R. 1940 Lab. 39  
 —O 39, R 1—*Injunction apart from—Power of Court to grant—Agreement as to form for decision of dispute—Suit in another Court—Injunction restraining its prosecution—If can be issued*

Courts have an inherent jurisdiction to issue an injunction in a proper case to prevent an abuse of the process of Court. Where the circumstances require it,

*See UNENCUMBERED ESTATES ACT, S 54—R 6*  
 OF RULES UNDER 1910 A.L.J. 820

—O 39, R 1 and 2—*Lawful exercise of right—If can be restrained—Mortgagor seeking relief under*

—O 40, R 1—*Appeal—Interference with discretion—Order appointing receiver*

When discretion is exercised by a Court in the matter of appointment of a receiver after considering the facts of the case, the discretion will not be interfered with in

## C P CODE (1908), O 40 R 1

J) NARAIN DASS GULAB SINGH v PATIALA DUR  
BAR A.I.R. 1940 Lah 345

—O 40 R 1—Execution of money decree—  
Appointment of receiver—When justified

A Court has jurisdiction to appoint a receiver even in execution of a money decree. To justify such an appointment, it is not necessary that there should be a default

party sold as soon as possible but the judgment debtor is putting obstacles in his way by raising all sorts of objections and thus delaying the proceedings and the judgment debtor is in the meantime appropriating the rents and profits paying little or nothing to the decree holder an order for the appointment of a receiver until the property is sold in convenient under O 4

Chand and Bhide JJ)  
v SETH SHANTI SAGAR  
13 R L 152=42 P L R

—O 40, R 1—Grounds of appointment—Appeal against order on application under O 40 R 1—Duty of appellate Court

The apposite words in O 40 R 1 are where it appears to the Court to be just and convenient. Where it was found that there was no sale to the property in suit and that was a fit and proper person to was held that it was not a fit case of a receiver. In an appeal against an order on an application under O 40 R 1 it is dangerous for the appellate Court to express any opinion at all as to the merits of the suit or to indicate even briefly whether

—Legatee under will of deceased whose property is in dispute—If fit and proper person

security to safeguard the interests of widow is ultimately found to be the rightful heir to the estate (Tee Chand and Dalip Singh JJ)  
LAL.

—O 40, R 1—Leave to stay  
Duty of Court

Where the applicant establishes

regular suit (Dunkley and Wright JJ) MOULJEE MARCAN & CO v M H MEHTA 180 IC 851=12 R L 292=A I R 1940 Rang 69

—O 40 R 1—Mortgage decree—Subsequent appointment of receiver—If justified

Under O 40 R 1 a receiver may be appointed before as well as after the passing of a decree. A mortgage decree was passed after compromise and the judgment debtor placed various obstacles in the way of sale; the

## C P CODE (1908) O 41 R 1

Court appointed a receiver to take charge of the mortgaged properties

Held that considering all the circumstances of the case the appointment of a receiver was amply justified and that the content on that proper course for the decree holder was to proceed to get the mortgaged property sold had no force (Bhide, J) MAHMOUD AN AHMAD 189 IC 729=13 R L 103=A I R 1940 Lah 125

—Receiver—Appointment in suit on Effect of—If creates charge in favour rents and profits—Money due by mortgagor to Government in respect of Kudimaramath—Liability of receiver to pay as incident of management See MORTGAGE—MORTGAGE SUIT

(1940) 1 M L J 429  
—O 40, R 1—Receiver—Legal position

A receiver appointed by the Court under O 40 R 1 is a General agent of the estate in that of virtue of respect of it against

them in the legal sense. The same reasoning does not apply to a receiver (Mukherjee and Roxburgh JJ) BHURAN MOHINI v BRAJ MOHAN 186 IC 584=12 R C 495=44 C W N 74=A I R 1940 Cal 1

—O 40, R 1—Removal of receiver—Failure to file accounts

The Court may remove a receiver who has failed to file his accounts in spite of its order and who considers it to the exclusion of the (McNair, J) SAREJA SUN VI DASI

I L R (1940) 2 Cal 102

—O 41 R 1—Requirement of copy of decree—If an inflexible rule

—O 40 R 1—Right of parties decided by trial

without copy of formal order—If competent

Under O 41, R 1 C P Code it is imperative that a copy of the decree should accompany the memorandum of appeal. An order under S 47 C P Code is by S 2 (2) included in the definition of a decree and an appeal against such an order not accompanied by a copy of the formal order which is filed beyond limitation is incompetent (Zia ul Hasan and Jorke JJ) MANGREY v SUNDAR 188 IC 226=12 R O 430=

C. P. CODE (1908), O. 41, R. 1

1940 OWN 228-1940 OA 221-  
1940 OLR 222-1940 AWH (CC) 261-

AIR 1940 Oudh 221

—O 41, R. 1—Scope—Order of R. 4 of C. P. Code—Appeal in same party and against same respondent—Copy of order filed in one appeal only—See 1932 Dig. Cas. 310, 311, 312, NARAIN NATHU v. MAHARAJ PRASAD AIR 1940 Pat 176

—O 41, R. 2—Scope—If a writ issued on written statement or memorandum of appeal—Appellate Court—Order of appeal judgment on such defences

An appellant who is not allowed to raise and answer on defences not raised in the written statement or in the memorandum of appeal. It is true that the Appellate Court under O 41, R. 2, C. P. Code, in deciding the appeal is not confined to the grounds of objection in the memorandum, but it is not permitted to rest its decision on any other ground unless the party affected thereby has had a sufficient opportunity of contesting the case.

rest

Where the defendants appellants claim to tenants and are resisting the plaintiff's suit possession on the footing that they are tenants, the fact that one of them has died pending the appeal and his heirs have not been brought on the record does not affect the maintainability of the appeal by the rest. If any one of them succeeds in establishing that he is a tenant, the plaintiff's suit for khas possession must necessarily fail and there would be no difficulty in

C. P. CODE (1908), O. 41, R. 4

rule is based on the assumption that all the plaintiffs or defendants in the suit are alive at the date of the passing of the appeal's decree and it cannot extend to cases where appeal is O 22, Pt. 4 and 11. In the case of one or more appellants dying even where a decree proceeds upon a ground common to all, the matter must be governed solely by Pt. 4 and 11 of O 22, C. P. Code. To hold otherwise is to hold that O 41, Pt. 4, C. P. Code, gives the Court power to set aside an statement and to reverse or vary a decree which has become final against a deceased appellant. (HARRIS, C. J., *West and Mann v. Hill, JJ.*) 1 AIR 1911 SAHUR 347, 10 JHA.

19 Pat 870-188 IC 745-13 R. P. 33-  
6 BR 737-21 PLT 197-1940 PWN 261-  
AIR 1940 Pat 318 (PB).

—O 41, R. 4—Scope and Effect—Partition suit—Partition—Appeal from decree—Death of some defendants—If operates as abatement of whole appeal—Right of surviving defendants to continue

An effective decree for partition can be passed in a partition action unless all the co-shares are before the

for partition  
sufficient in  
proceeds on  
if there is a  
one of them,  
whole appeal  
R. 4 of C. P.  
of such a  
after partial  
inconsistent  
andant and  
HJH  
685-  
677-  
311.

—O 41, R. 4—Scope of—Withdrawal of appeal filed by one of several defendants—Order defendants not parties, if can claim to continue appeal.

The words of R. 4 of O. 41, C. P. Code, only mean that if an appeal is filed by only one of the parties, the whole case is reopened. This is different from saying

## C P CODE (1908) O 41, R 6

*Hasan J*) SHEO GORIND v LAHUR MAHOMED  
1940 A W R (C O) 478 = 1910 O. A. 1079 =  
1940 O W N 1155

—O 41, R 6—Stay of sale—Duty of Court—Rule for stay discharged under R 5

Under O 41, R 6, C P Code it is incumbent upon the Court to stay the sale on suitable terms as to security, if an application is made to it. The fact that the stay for execution has been refused by the appellate Court under O 41, R 5, C P Code, or that the rule for stay must be taken to have been discharged by reason of the non fulfilment of the terms on which the stay was granted by the appellate Court, does not justify the Court in refusing to exercise the jurisdiction vested in it under O 41 R 6 (*Lodge J*) DHIRENDRA NATH ROY v SA BOSE 44 C W N 1150 = A I R

—O 41 R 6 (2)—Appellate Court stay execution under R 5 (1)—Power of stay sale

An order of the appellate Court refusing to stay execution of the decree under R 5 does not fetter the power of the decree to stay under O 41, R 6 execution of the decree. In fact option but to stay a sale on such a proper application to that effect. JITENDRA NATH v BHOLANATH

—O 41 R 6 (2)—Limited stay order—It can be granted

Under the provisions of O 41 R 6 (2) the Court which passed the decree has full powers to stay a sale

need and er of home RISH 543

—O 41, R 6 (2) and S 115—Order under Revision

The High Court may interfere in revision in respect of an incorrect order under O 41 R 6 (2) C P Code (*Edgley, J*)

—O 41, R 6  
appeal being in  
Sec 1939 Dig  
MANIA SASTRI  
190 I O 19 =

lant  
Gen  
Col

1940 P W N 168 = 21 P L T 420 = 6 B R 407 =  
187 I O 31 = 12 R A 519

—O 41, R 11 and 12 (1)—Construction and scope—Appeal—Admission in part only—Power of Court

A Court in dealing with an appeal under O 41, R 11, C P Code, cannot direct that it be admitted in

a day for hearing 'the appeal'. There is nothing in either rule to suggest that the Court may admit the appeal in part only. There are only two courses open

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O 41, R. 17, C P. Code, only applies when the appeal is called on for hearing and not when it is called on merely in order to be postponed (*Stemp, J*) UMED BARKAT v BHURJEE 42 P L R 271

—O 41, R 17, 30 and 31—Dismissal under R 17 of O 41, when justified—Court, when bound to proceed under R 30 and 31

procedure has to be adopted only 'after hearing the

possible  
Unless the dismissal of an appeal falls under either R 11 (2) or R 17 or R 18 of O 41, there can be no restoration or rehearing under R 19 (*Bennet and Verma*) I L R

—O 41, R 20—Addition of necessary parties—Powers of Board—When to be exercised—Procedure to be followed where defect occurred in the lower Court

The Board undoubtedly possesses the power of requiring all necessary parties to be impleaded in an appeal under O 41 R 20, C P Code, but this power should

O 41, R 20  
J PRKASHI  
Pat 768 =  
190 I O 303 = 12 R P 549 =  
1940 P W N 168 = 21 P L T 420 = 6 B R 407 =  
A J R 1940 Pat 137

—O 41 R 20—Contingent respondent added in supporting appellant—It can be added after 1939 Dig Col 312 RAM RATTAN I I L R (1940) Lah 40 = 187 I O 839 = 12 R L 492

—O 41 R 20—Party 'interested in the result of the appeal'—Party not impleaded in appeal against whom appeal is barred.

## C P CODE (1908), O 41, R 20

Where a plaintiff continued against defendant 1 only and defendant 2 perfects an appeal defendant 1 cannot be deemed to be interested in the result of the appeal at the time when the finding of liability for an appeal against him has expired and therefore his finding as a respondent in the appeal by the appellate Court is not permitted by law. (*See See J*) LAKSHJEE SINGH *vs* *State* 198 IC 100-12 R R 359-  
A.I.R. 1910 Rangoon 97

O 41 R 20—*Power of Court—Impeding respondent after limitation*

Under O 41 R 20 C.P. Code the Court is not competent to allow the appellant to implead a respondent for the first time after the limitation for the appeal has expired. (*See Mohammad J*) SHANGARA SINGH *v* IMAM DIN 190 IC 332-13 B.L. 147-  
42 F.L.R. 355-A.I.R. 1940 Lah 314

O 41 R 21 and O 9 R 13—Absence at hearing of appeal—Grounds for setting aside *ex parte* decision against him. (*See 1939 D.C. Col 312*) NATAYA SINGH *v* VIKRAM KISHAN AMMAL 192 IC 704-  
13 B.L. 313-A.I.R. 1940 Mad 63

O 41 R 21—*Re hearing of appeal—If he may be ordered*

An appeal was fixed for hearing before a District Judge on the 10th August 1938. On that day the District Judge was hearing a *Sewlon* case and the appeal was adjourned to 2nd December 1938. The order signed by the Judge showed that the appellant's counsel was present but that the respondent was not represented in spite of writs November, the Court issued an order that the appeal will be heard on 2nd December. It was accordingly a *ex parte* order and his counsel appeared on that the *ex parte* order should be set aside.

*Held*, that the appeal ought to be heard. (*Shemp J*) UMED HA

O 41 R 22—*Appeal by plaintiff whose suit was dismissed in entirety—Objections by pro forma defendant who did not contest suit—Premissibility*

O 41 R 22—*Applicability—Appeals under*

O 41 R 22—*Cross objections—If can be filed against one not a party to the appeal*

The C.P. Code does not contemplate filing of cross-objections against a person not a party to the appeal

## C P CODE (1908), O 41, R 23

(*Small J*) PARTAP CHAND *v* CHUNNI LAL 198 IC 376-12 R A 15-1940 A.L.J. 161-  
1940 A.W.R. (H.C.) 107-A.I.R. 1940 A.L.J. 225

O 41 R 22—*Filing of cross-objections—Extension of time—Discretion of Court—Interference*

It is entirely discretionary with the Court of appeal to extend the time for filing cross-objections and in refusing to extend time it cannot be said that it commits an error of law which can be interfered with in second appeal. (*S. A. Ghose and Mukherjee, JJ*) ANILYA KRISHNA NARAYAN *v* RAJULI PINNIA CO-OPERATIVE BANK, LTD. 187 IC 416-12 R C. 578-70 C.L.J. 397-  
A.I.R. 1940 Cal 150

O 41 R 22—*Letters filed as appeal from first appeal—Court set aside—If can be set aside*

O 41 R 22 (4)—*Scope of—Water rent of appeal—Cross objection—First on. See 1939 Dig Col 3-7* PERASHOTAM DAS *v* DEOKARAN 11 R. (1940) Nag 324.

O 41 R 22 (5)—*Leave to file cross-objections in forma pauperis—If can be granted*

J.J. BALKISHAN *v* J.J. JAWNI 1039 M.L.R. 214 (Civ)

O 41 R 22—*Scope—Dismissal of suit—Can the defendant appeal against a decree by Court adverse to defendant not objections—Right*

cannot be supported without traversing the grounds against the embodiment to him in the appeal objection to it is taken to it the dismissal of suit convince the court inserted in the appeal but has to safeguard the subject

O 41 R 23—*Appeal—When lies See C.P. Code, O 43, R 1 (v)* 1940 N.L.J. 350

O 41 R 23—*Applicability—Conditions for remand—'Preliminary point'—Meaning of See 1939 Dig Col 313* SURAJMAL DEORAM *v*

C P CODE (1908), O 41 R. 23

KALU I L R (1939) Bom 658=186 I C 695=  
12 R B 370=A I R 1940 Bom 22  
—O 41, R 23 (as amended in Oudh)—*Construct*

C P CODE (1908), O 41, R 27.

tantiate the case of a party, there is no question of any lacuna or inherent defect. If the additional evidence is not necessary for the Court to appreciate a party's case

remand—If exists—When could be resorted to

There is no doubt that there is an inherent power of remand. That is obvious when the changes between S 562 of the old Code and S 562 of the new Code are compared. The power so c by Courts but a resort to S 151

the Court of appeal (*Din Mahomed, J*) BANARSI  
DAS v RULIA 42 P L E 261

—O 41 Br 27 (2) and 29—*Duty of Court—*

N L J 350=  
A I R 1940 N W N 240

—O 41, R 23—*Remand under—Ct order*

The operative position of an order of Court was to the following effect—“I judgment and decree of the lower Court appeal of plaintiff No 3 with costs. The sent back and re tried according to law if where it has been left by the learned Mun

—O 41 R 27 (1) (b)—*Lacuna—Negligence of*

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187 I C 848=  
12 R L 498

Court—*Additional  
Party failing to  
Court—Additional  
Inadmissibility*

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—O 41  
—*Power of appellate Court to admit*

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J) MANGU  
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6 B R 54

can be supplied in appeal (*Wadsworth, J*) ASSYA  
1940 M W N 511=  
A I R 1940 Mad 707

—O 41, R 27—*Power of Court—Patta  
need in appeal—No satisfactory explanation  
non production earlier—Admissibility*

—O 41 R 27 (2)—*Additional evidence—Admissibility in appeal—Grounds of—Admission of fresh evidence for corroborating oral evidence disbelieved by trial Court—If justified*

An appellate Court cannot admit fresh evidence in appeal where such admission is not for the purpose of

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justice between the parties. Additional evidence can only be admitted on the grounds mentioned

C P. CODE (1908), O 41, R 27

—O 41 R 27—Scope—Omission to record reasons for admission of additional evidence—When ground for reversal—Absence of objection to admission

second appeal The absence of objection becomes important only when it appears to have been equivalent to a consent (*Wadsworth, J*) *ASSYA UMMA v MOOSA* 1940 M W N 511—A I R 1940 Mad 707

—O 41 R 30—Order announced in two parts—Legality

There is nothing in O 41 R 30 C P Code to prevent a Court from deciding a preliminary issue before passing its final judgment, and an order in two parts is, therefore, not illegal  
*KHUSHI RAM v ATMA RAM*

C P CODE (1908), O 41, R 33

Appeal by former against decree seeking to make latter also liable—Competency—Absence of appeal by plaintiff—Effect

ties not choosing to appeal—Decision in favour of such parties—Power of Court to pass

The provisions of O 41, R. 33, C P Code, which enable the appellate Court, where its decision interferes with or modifies or extends the

O cases where separate decree between two

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6 B R 229  
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chooses to implead in his appeal only one of two co-defendants against whom an alternative claim was made,

J) *SULEMAN v ABDUL GHANI*

42 P L R J & K 52

—O 41 R 31—*See*

Contents

The judgment of the Court contained in every respect should be properly discussed evidence led by the parties.

*Waur J*) *GHULAM HAIDAR KHAN v GHULAM LUMI*  
42 P L R J & K 42

—O 41 R. 33—Alteration of decree in favour of non appealing respondent—Power of appellate Court  
*See* 1939 Dig Col 316. *HARI MOHAN GUHA v BANSODHAI PATHAK* A I R 1940 Pat 47.

—O 41, R. 33—Applicability—Decree against one set of defendants exonerating another set of defendants—

—O 41, R. 33—Scope—1) subject to Court Fees Act

Although the wording of O 41, R. 33, C P Code, gives wide powers to the appellate Court those powers should not be exercised in a way as to interfere with the provisions of enactments e.g., the Court Fees Act and *Rowland, JJ*) *SURAJ PRAKASH*



C P CODE (1908), O 41, R. 23

KALU I L R (1939) Bom 658=186 I C 695=

C P CODE (1908), O 41, R. 27.

tantiate the case of a party, there is no question of any evidence is party's case should not be in Aiyangar, 2 L W 328=

A I R 1940 Mad 911=(1940) 2 M L J 287  
O 41, R. 27—Discretion of Court

## A I R

O 41, R. 23 and S 151—In

remand—If exists—When could be resorted to

There is no doubt that there is an inherent power of remand. That is obvious when the changes between S 562 of the old Code and O 41 R 23 are considered. The power so conferred must not only be sparingly used by Courts but also the Courts have no power whatever to resort to S 151 C P. Code when the matter is expressly dealt with in the Code. If they do so they act without jurisdiction and their orders are revisable (*Stone, C J and Bose, J*) SHEOLAL v JUGAL KISHORE

I L R (1940) Nag 538=1940 N L J 350=

A I R 1940 Nag 349

O 41 R 23—Remand under—Construction of order

The operative position of an order of an appellate Court was to the following effect—'I set aside the judgment and decree of the lower Court and allow the appeal of plaintiff No 3 with costs. The case will be sent back and re tried according to law from the stage where it has been left by the learned Munsif'

Held, that the order was an order of remand contemplated by O. 41 R. 23, C P Code, and as such was appealable under O 43 R 1(4) C P Code (*Radha Krishna, J*) MATHURA PRASAD v SITA RAM

187 I C 889=1910 O L R 287=12 R O 411=

Court an appc.  
O 41 R 23-A  
the remand is  
(Bate J) 1

O  
—Power of appellate Court to admit

The power of an appellate Court to admit additional evidence is limited by O 41, R 27, C P Code, and the conditions prescribed by the rule must be satisfied (*Harries, C J and Fazl Ali J*) MANGTU LAL BAGARIA v SECRETARY OF STATE

18 Pat 854=187 I C 727=

6 B R 549=12 R P 647=1940 P W N 45=

A I R 1940 Pat 161

O 41, R. 27 (2)—Additional evidence—Admissibility in appeal—Grounds of—Admission of fresh evidence for corroborating oral evidence disbelieved by trial Court—If justified

An appellate Court cannot appeal where such admission is remedying some inherent lacuna purpose of providing corroborating which had been disbelieved by the oral evidence is complete, and would be believed, 1940

the Court of appeal (*Din Mahomed, J*) BANARSI DAS v RULIA 42 P L R 261

O 41, Rr 27 (2) and 29—Duty of Court—Recording of reasons—Specification of points

An appellate Court admitting fresh evidence is bound by R 27 (2) of O 41, C P Code to record its reasons for so doing, and under R 29 must specify the points in which the evidence is to be confined and record on its proceedings the points so specified (*Din Mahomed, J*) BANARSI DAS v RULIA 42 P L R 261

O 41 R 27 (1) (b)—Lacuna—Negligence of party—Admissibility of new evidence in appeal

Where it is really to enable a party to fill up a lacuna in his evidence which lacuna was the result of his own negligence, and not necessary to enable the Court to pronounce judgment, new evidence should not be allowed to be admitted in appeal (*Yorke J*) KHA DIM ALI v JAGANNATH 1940 O A 973=1940 A W R (C C) 428=1940 O W N 999

O 41 R 27—Non production in lower Court—Additional evidence—Admissibility See 1939 Dig, Col 315 JIWAN v KESHO DAS 187 I C 848=

O 41, R 27—Power of Court—Additional evidence—When to be admitted—Party failing to

inquire that the case a satisfactory such a procedure not be allowed to which is obviously lverse comment is ence the deficiency

can be supplied in appeal (*Asworth J*) ASSYA UMMA v MOOSA 1940 M W N 511= A I R 1940 Mad 707

O 41, R. 27—Power of Court—Patta produced in appeal—No satisfactory explanation as

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A I R. 1940 Nag 400.

## C P. CODE (1908), O 41, R 27

—O 41, R 27—Scope—Omission to record reasons for admission of additional evidence—When ground for reversal—Absence of objection to admission of evidence—Effect

It is established that when both parties agree that further evidence is necessary and admission of that evidence is made by consent, any failure on the part of the Judge to record in due form the reasons for the admission of that evidence is not a matter which would

important only when it appears to have been equivalent to a consent (*Wadsworth J*) ASSYA UMMA V MOOSA 1940 M W N 511—A I R 1940 Mad 707

—O 41 R 30—Order announced in two parts—Legality

There is nothing in O 41 R 30 C P Code to prevent a Court from deciding a preliminary issue before passing its final judgment, and an order in two parts is, therefore, not illegal (*Khushi Ram v Atma Ram*)

Court to give a decision on any point or the reasons for the decision, inasmuch as there was in fact no point for determination raised before the Court. It is sufficient for the Court to pass an order of dismissal for default, which does not necessarily mean default of appearance but rather means dismissal for default of proof (*Bennet*)

—Court when bound to follow See C P. CODE, O 41 RR 17, 30 AND 31 1940 A L J 121

J) SULEMAN V ABDUL GHAN

42 P L E J & K 52  
—O 41 R 31—Judgment of appellate Court—Contents

The judgment of the Court of appeal should be self-contained in every respect and the material points in issue should be properly discussed with reference to the evidence led by the parties (*Abdul Qayoom C J* and

## C P CODE (1908), O 41, R 33

Appeal by former against decree seeking to make latter also liable—Competency—Absence of appeal by plaintiff—Effect

In a suit on a mortgage against eight defendants, the plaintiff got a decree against defendants 1 to 4 and the remaining defendants were exonerated. Plaintiff did not appeal but the defendants 1 and 4 appealed against the decree and sought in the appeal to make defendants 5 to 8 also liable to the plaintiff for the decree amount.

33, C P Code, would apply and defendants 1 to 4 involving as it succeeded defendants 5 to 9 and Chatterji J) RANESH RAMPRATAP THAKUR

634=12 R P 621=6 B R 519  
—O 41, R 33—Applicability—Powers of Court—Distinct and separate decree against parties not choosing to appeal—Decision in favour of such parties—Power of Court to pass

The provisions of O 41, R 33, C P Code, which enable the appellate Court, where its decision interferes with or modifies or extends the

the Court can bring them on the record under O 41, R 20, and after proper steps may pass such order (*Varma and Rowland, JJ*) SURAJ PRAKASH PURI V SANT LAL SINGH 18 Pat 768=186 IC 865=12 R P 549=6 B R 407=1940 P W N 168=21 P L T 420= A I R 1940 Pat 137.

41 R 33—Applicability to second appeals—Is S 100 See C P Code S 100

185 IC 639=6 B R 229  
41, R 33 and 4—Combined effect of See C P CODE O 41, RR 4 AND 33—COMBINED EFFECT OF. 1940 O A 107.

—O 41, R 33—Decree of appeal to Court—Suit by plaintiff against any before it.

defendants against whom an alternative claim was made, he has only himself to blame if the respondent succeeds in the appeal in shifting the liability on to the defendants who has not been impleaded in the appeal (*Wadsworth, J*) VIRUPAKSHAYYA V SUBBARAYUDU

1940 M W N 422=51 L W 615= A I R 1940 Mad 609

R. 33—Scope—If subject to Court—

the wording of O 41, R 33, C P. wide powers to the appellate Court, should not be exercised in such a manner as to interfere with the provisions of enactments e.g., the Court Fees Act. (*and Rowland, JJ*) SURAJ PRAKASH

—O 41, R 33—Applicability—Decree against one set of defendants exonerating another set of defendants—

## C P CODE (1908), O 41, R. 23

KALU I L R (1939) Bom 658=186 I C 695=  
12 R B 370=A I R 1940 Bom 22  
—O 41, R 23 (as amended in Oudh)—*Construction*—*Have not been decided*

The words have not been decided in O 41, R 23 as amended by the Oudh Court, clearly refers to a decision

1940 O W N 500=1

A I R

—O 41, R 23 and S 151—*Inherent power of remand—If exists—When could be resorted to*

There is no doubt that there is an inherent power of remand. That is obvious when the changes between S 562 of the old Code and O 41, R 23 are compared.

The power by Court to resort to remand is dealt with in

jurisdiction and their orders are revisable (*Stone, C J and Bose, J*) SHEOLAL v JUGAL KISHORE

I L R (1940) Nag 538=1940 N L J 350=

A I R 1940 Nag 349

—O 41 R 23—*Remand under—Construction of order*

The operative position of an order of an appellate Court was to the following effect—'I set aside the judgment and decree of the lower Court and allow the case will be at the stage

—O 41 R 23-A (Lahore)—*Order of remand—Appeal*

Where the case Court an O 41, R the remand (*Bhale J*)

I L R (1940) Lah 593=186 I C 828=

—O. 4

—*Power of a*

The power of additional evidence Code, and it must be satisfied

(J) MANGTU LAL BAGARIA v SECRETARY OF STATE 18 Pat 854=187 I C 727=

6 B R 549=12 R P 647=1940 P W N 45=

A I R 1940 Pat 161

—O 41 R 27 (2)—*Additional evidence—Admissibility in appeal—Grounds of—Admission of fresh evidence for corroborating oral evidence disbelieved by trial Court—If justified.*

An appellate Court cannot refuse admission of fresh evidence where such admission is

## C P CODE (1908), O 41, R 27.

tantiate the case of a party, there is no question of any lacuna or inherent defect. If the additional evidence is not necessary for the Court to appreciate a party's case or to pronounce judgment on it, it should not be admitted (*Leach, C J and Krishnaswami Aiyangar, J*) NARASIMHAMURTI v HAYAT KHAN

1940 M W N 863=52 L W 328=

A I R 1940 Mad 911=(1940) 2 M L J 287

—O 41, R 27—*Discretion of Court*

up the weak parts of his case and fill up omissions in the Court of appeal (*Din Mahomed, J*) BANARSI DAS v RULIA 42 P L R 261

—O 41, R 27 (2) and 29—*Duty of Court—*

its proceedings the points so specified (*Din Mahomed, J*) BANARSI DAS v RULIA 42 P L R 261

—O 41 R 27 (1) (b)—*Lacuna—Negligence of party—Admissibility of new evidence in appeal*

Where it is really to enable a party to fill up a lacuna in his evidence which lacuna was the result of his own negligence, and not necessary to enable the Court to pronounce judgment, new evidence should not be allowed to be admitted in appeal (*Yorke J*) KHA DIM ALI v JAGANNATH 1940 O A 973=1940 A W R (C C) 428=1940 O W N 999.

—O 41 R 27—*Non production in lower Court—*

nance—*Admissibility See 1939 Dig.*

\* v KESHO DAS 187 I C 848=

12 E L 498.

: 27—*Power of Court—Additional*

*to be admitted—Party failing to*

*evidence in trial Court—Additional*

*to fill up gaps—Admissibility*

The failure of a party to examine a material witness when that witness is available and the consequent

abstain from producing evidence which is obviously that if an adverse comment is

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appeal (*Wadsworth J*) ASSYA

1940 M W N 511=

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1939 N L J 594=

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## C. P. CODE (1908), O 41 R 27

—O 41 R 27—*Scope—Omission to record reasons for admission of additional evidence—If then ground for reversal—Absence of objection to admission of evidence—Effect*

It is established that when both parties agree that further evidence is necessary and a mission of that evidence is made by consent any failure on the part of the Judge to record in due form the reasons for the admission of that evidence is not a matter which would justify a reversal of the judgment.

the correctness of the admission or to make it a ground of reversal of the judgment based on that evidence in second appeal. The absence of objection becomes important only when it appears to have been equivalent to a consent. (*Madras v. A. S. V. UNMA R. MOOSA* 1940 M. W. N. 511—A. I. R. 1940 Mad 707)

—O 41 R 30—*Order pronounced in two parts—Legality*

There is nothing in O 41 R 30 C. P. Code to prevent a Court from deciding a preliminary issue before passing its final judgment, and an order pronounced in two parts is therefore not illegal. (*Garbett F.C.*) KHUSHI RAM v. ATMA RAM 19 Lah. L. T. 31

—O 41, Rr 30 and 17—*Party appearing in person—No appearance by counsel and no arguments—Manner in which the appeal could be disposed by Court*

in Court when bound to follow See C. P. CODE, O 41 Rr 17, 30 AND 31 1910 A. L. J. 221

—O 41 R 33—*Applicability—Decree against one set of defendants exonerating another set of defendants—*

## O. P. CODE (1908), O 41, R 33

*Appeal by former against decree seeking to make latter also liable—Competency—Absence of appeal by plaintiff—Effect*

In a suit on a mortgage against eight defendants the plaintiff got a decree against defendants 1 to 4 and the remaining defendants were exonerated. Plaintiff did not appeal but the defendants 1 and 4 appealed against the decree and sought in the appeal to make defendants 5 to 8 also liable to the plaintiff for the decree amount.

Held that O 41, R 33, C. P. Code would apply and that the appeal by defendants 1 to 4 involving as it would if the appellants succeeded defendants 5 to 9 was competent. (*West and Chatterji JJ*) PANESH WAR PRASAD SINGH v. AMPRATAP THAKUR 187 I. O. 634—12 R. P. 621—6 B. R. 519

—O 41, R 33—*Applicability—Powers of Court—Distinct and separate decree against par-*

there has been a distinct and separate decree

41 R 33—*Applicability to second appeals—* is S 100 See C. P. Code S 100

185 I. O. 639—6 B. R. 229

41, Rr 33 and 4—*Combined effect of See C. P. CODE, O 41, Rr 4 AND 33—COMBINED EFFECT OF,* 1940 O. A. 107

—O 41 R 33—*Powers of appellate Court—See*

41, R 33—*Scope—If subject to Court—*

the wording of O 41, R 33, C. P. wide powers to the appellate Court, rs should not be exercised in such a interfere with the provisions of enactments e.g. the Court Fees Act and Rowland, JJ) SURAJ PRAKASH

—O 41, R 33—*Applicability—Decree against one set of defendants exonerating another set of defendants—*

C P CODE (1908), O 41 R 33

SANT LAL SINGH

18 Pat 768=

186 IC 865=12 RP 549=

6 B R. 407=1940 P.W.N. 168=21 P.L.T. 420=

AIR 1940 Pat 137

—O 41, R 33—Scope of power under

There is no doubt that under O 41 R 33 the appellate Court has been given very wide powers to do complete justice between the parties. Under appellate Court enjoys a discretionary power such decree as ought to have been passed. Court This power however can be exercised in favour of a party to the suit who was not impleaded in the appeal. It is not permissible under this rule to pass any decree against a party who is not a party to the appeal as a respondent in the appeal.

CHAND : CHUNNI LAL

12 R A 1

1940 A W R (H C) 169=

—O 41 R 33—Scope—Respondent not filing cross objections—Right to attack findings See 1939 Dig Col 316 FAROK AHMED MEAH v LALIT MOHAN CHOUDHURY 185 IC 94=12 R C 329

—O 41, R 33—Scope—Suit dismissed—Appeal

—O 43, R 1 and S 115—Order returning appeal for presentation in proper Court—Appeal—Revision

No appeal lies from an order of an appellate Court returning the appeal for presentation in the proper Court. But if the order is wrong, the Court refuses

includes an appeal and an appeal therefore lies against an order refusing to set aside the abatement of an appeal (King J) RAJU MUDALI v CHINNARAJU NAIDU 52 L W 476=1940 M W N 1005= (1940) 2 M L J 562

—O 43, R 1 (m)—Order refusing to record com

PLESCO OPERATIVE BANK, LTD. PATNA v SHYAM NARAIN. 6 B R 767=189 IC 232=13 R

AIR 1940 Pat 137

—O 43 R 1 (n)—Remand order—When

able In the case of remands an appeal lies only when the remand is under O 41, R 23 C P Code. It follows that there can be no appeal from an order of remand unless it is made under O 41, R 23 C P Code.

C P CODE (1908), O. 45, R 2

AIR 1940 Nag 349  
—O 43, R 1 (w)—Scope—If subject to O 47, R 7—Order granting review for sufficient ground—319 HAR BALLAV 185 IC 769=

AIR 1940 Pat 7.  
—Appeal from decision of Special Judge under U P. Encumbered Estates Act—Appellant applicant under the Act, if a

numbered Estates is not a pauper of the Act against which if he desires to appeal against a decision of the Special Judge, cannot claim that he is a pauper because he has not been able to find the difficulty as a pauper.

PREM K  
—O 44, R 1 and 2—Application for leave to appeal in forma pauperis—Order rejecting it on Mansif's report without hearing applicant—Revision. See C. P CODE, S 115—MATERIAL IRREGULARITY. 186 IC 170.  
—O 44, R 1—Pauperism—Determination—Property decreed in trial Court, if can be taken into account.

Where a pauper plaintiff who has partially succeeded wishes to appeal against the decree as a pauper, the

—O 44, R 1 (Allahabad)—Proceedings under—Respondent if entitled to be heard on the merits of the appeal See 1939 Dig Col 319 RAM KAILASH KUNWARI v ISHWAR SARAN I.L.R. (1939) All 917= 185 IC 406=12 R A 321.

—O 44, R 1—Procedure—Rejection of application for leave to appeal in forma pauperis

cannot be rejected without hearing the applicant or

J) SUBBAYYA NADAR v ANJANEYALU 52 L W 514=1940 M W N 1026= (1940) 2 M L J 570.

## C P CODE (1908) O 45 R 7

substantial question of interpretation of Government of India Act granted—Application for leave to appeal to Federal Court—Certificate—If to be applied for or granted—Court—If bound to consider whether substantial question of interpretation arises. See GOVERNMENT OF INDIA ACT (1935) s 205 (1)

(1940) 2 M L J 170

—O 45 R 7—Extension of time for furnishing security—Jurisdiction of High Court

The High Court has no jurisdiction to extend the time for furnishing security by an appellant to the Privy Council beyond the period prescribed by O 45, R 7, C. P. Code (*Darbyshire C J and Mukherjee, J*) AKIMLUDIN v. FAIZ CHAND 44 O W N 920

—O 45 R 7—Extension of time for furnishing security—Power of High Court—Privy Council Rules, 1937

—O 45 R 7 and 17—Order refusing time for deposit of printing costs—Appeal Court—If lies

*Gwyer C J*—The Federal Court has not entertain any appeal from an order of the High Court refusing to extend the time for receiving the printing cost in respect of an appeal to the

—O 45, R 7—Scope—Privy Council Rules, R 9

—Extension of time for security—Discretion of Court—Limits to power of Court. See 1939 Dig Col 320 SHANKAR v. PUTTABAI 185 I C 410-12 E B 237

—O 45, R 8 and 17—Appeal to Federal Court not admitted by High Court after grant of certificate—Prosecution of appeal before Federal Court—If barred—Government of India Act, s 205(1)

Per *Gwyer, C J*—The absence of any admission by

## C P CODE (1908) O 46, R 1.

—Applicability to Federal Court appeals. See 1939 Dig. Col 321 LACHMISHWAR PRASAD SUKUL v. GINDHARILAL 19 Pat. 123-6 B E 159-185 I O 353-3 F L J (P II) 1-12 R P 353 (F B)

—O 45 R 7(1)—As applied to Federal Court appeals—Date of the decree—Meaning of. See 1939 Dig Col 320 LACHMISHWAR PRASAD SUKUL v. GINDHARILAL 19 Pat. 123-6 B E 159-185 I O 353-3 F L J (P II) 1-12 R P 353 (F B)

—O 45 R 17—Application to High Court before granting of certificate—Irregularity

Rule 17 which has been added to O 45 C P Code, by the Government of India (Adaptation of Indian Laws) Order, 1937, assumes that a certificate under s 205 of the Constitution Act has already been given, and an application to the High Court under O 45 is, therefore, irregular where no such certificate has been granted (*Gwyer, C J, Sulaiman and Varadachariar*).

nce under O 46, either hearing a is not subject to execution of any te an award made bay Co operative

—O 46, R 1—Applicability—Reference—When competent

O 46, R 1, C P Code, cannot apply except in cases where there is a pending suit or appeal in which the decree is not subject to appeal (*Broomfield and Divatia, JJ*) BABUBHAI VAMALCHAND v. HIRALAL VAMALCHAND 42 Bom. L R 1093.

—O 46 R 1—Question of law arising during execution—Jurisdiction of Court to make Reference—

C P CODE (1908) O 41 R 33

SANT LAL SINGH

6 BR 407=1940 F 1

—O 41, R 33—Scope of power under

There is no doubt that under O 41 R 33 the appellate Court has been given very wide complete justice between the parties. The appellate Court enjoys a discretionary such decree as ought to have been passed by the Court. This power however can be exercised in favour of a party to the suit who was not impleaded in the appeal. It is not permissible under this rule to pass any decree against a party who has not been impleaded as a respondent in the appeal (*Ismael J*) PARTAP CHAND v CHUNNI LAL 188 IC 396=

12 RA 15=1940 ALJ 161=1940 AWR (HC) 169=AIR 1940 All 225

—O 41 R 33—Scope—Respondent not filing cross objections—Right to attack findings See 1939 Dg Col 316 FAROK AHMED MEAH v LALIT MOHAN CHOUDHURY 185 IC 94=12 RC 329

—O 41 R 33—Scope—Suit dismissed—Appeal by one defendant—Cross-objection by non appealing plaintiff—Maintainability See 1939 Dg Col 316 HALLIMAN BIBI v MAHOMED TAJAMUL HUSAIN

6 BE 141=185 IC 250=12 BP 332

—O 43 R 1 and S 115—Order returning appeal for presentation in proper Court—Appeal—Revision

No appeal lies from an order of an appellate Court returning the appeal for presentation in the proper Court. But if the order is wrong the Court refuses to exercise a jurisdiction vested in it by law and therefore, a revision lies (*Skemp J*) SHAM LAL v SHAH BAZ KHAN 42 PLR 364

—O 43 R 1 (c)—Order dismissing application to

includes an appeal and an appeal therefore lies against an order refusing to set aside the abatement of an appeal (*Air J*) RAJU MUDALI v CHINNARAJU NAIDU 52 LW 476=1940 MWN 1005=

(1940) 2 MLJ 562

—O 43 R 1 (m)—Order refusing to record com

able  
In the case of remands an appeal lies only when the remand is under O 41 R 23 C P Code. It follows that there can be no appeal from an order of remand

C P CODE (1908), O 45 R 2

AIR 1910 Nag 319  
—O 43 R 1 (w)—Scope—If subject to O 47,

tion of Special Judge under U P Encumbered Estates Act—Appellant applicant under the Act, if a pauper.

An applicant under the U P Encumbered Estates Act who has considerable properties is not a pauper because of the prohibition under S 7 of the Act against dealing with such property. An applicant if he desires to appeal against a decision of the Special Judge, cannot claim that he is a pauper because he has not been able to find a buyer. He has to seek the means to get over the difficulty arising out of S 7 and not claim benefit as a pauper (*Yorki and Ritha Krishna JJ*) PREM KUMAR v GIRDHARI LAL 15 Luck 397=

186 IC 789=12 EO 343=1940 RD 111=

1940 AWR (CC) 140=1940 OA 245=

1940 OLR 149=1940 O WN 258=

AIR 1940 Oudh 208

—O 44 R 1 and 2—Application for leave to appeal in forma pauperis—Order rejecting it on Monsif's report without hearing applicant—Revision, See C P CODE S 115—MATERIAL IRREGULARITY

186 IC 170

—O 44 R 1—Pauperism—Determination—Property decreed in trial Court if can be taken into account

Where a pauper plaintiff who has partially succeeded wishes to appeal against the decision, a pauper the

—O 44 R 1 (Allahabad)—Proceedings under—Respondent if entitled to be heard on the merits of the appeal See 1939 Dg Col 319 RAM KAILASH KUN

WARI v ISHWAR SARAN ILR (1939) All 917=

185 IC 406=12 RA 321

—O 44 R 1—Procedure—Rejection of application giving him opportunity

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ng the applicant or  
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C F CODE (1908) O 48, E 1.

—Appl. cablity to Federal Court appeals. See 1939  
Dg. Col 321 LACHNESHWAR PRASAD SUKUL  
(RUBHAKILAL) 19 Pat 123-G B.R. 159-  
185 I O 353-3 F.L.J. (P II) 1-  
12 R P 353(F.B.)

—O 45 E 7(1)—As applied to Federal Court  
appeals— Date of the decree—Meaning of See 1939  
Dg Col 320 LACHMESHWAR IRASAD SUKUL v.  
GIRDHARI LAL 10 Pat 123—GBR 159—  
185 IC 353—3 FLJ (P II) 1—

12 E.P. 353 (T.B.)  
 —O 45 E. 17—Application to High Court before  
 granting of certificate—Irregularity

Rule 17 which has been added to O 45, C.P. Code, by the Government of India (Adaptation of Indian Laws) Order 1937, assumes that a certificate under s. 205 of the Constitution Act has already been given, and an application to the High Court under O 45 is, therefore irregular where no such certificate has been granted (*Gwyer C.J., Sulaiman and Varadachariar, JJ.* RAJA KRISHNA CHAND LALL CHOWDHURY).

SUNHKA) RAI I.L.R. (1940) Kar. (FC) 52-  
187 LC 453-12 BFC 22-21 PLT 405-  
6 BR 408-1940 OLR 263-62 LW 122-  
72 OJ 142-1940 M WN 585-  
1940 PWN 700-44 OWN (FR) 29-  
STLJ 61-AIR 1940 FO 25-  
(1940) 1 M.L.J. (Supp) 28

—O 46 B 1—Applicability—Application for execution of award under Bombay Co-operative Societies Act 1925—Reference—Competency

The condition precedent to a reference under O 46, R 1 is that the Court which refers is either hearing a suit or an appeal in which the decree is not subject to an appeal, or is hearing proceedings in execution of any such decree. An application to execute an award made under the provisions of the Bombay Co-operative Societies Act, 1925, is not a suit or the execution of a decree in a suit, so that, O 46, R 1 can have no application (*Datt, J.C. and Lobo, J.*) KARACHI URBAN CO-OPERATIVE BANK LTD v SAHIBDIN  
I.L.R. (1940) Kar 411-188 IC 609-  
1385 G-AIR 1940 Sind 111

9 ~~-----~~ O 46 R 1 ~~Applicability--Reference--When~~  
competent

O 46, R 1, C P Code cannot apply except in cases where there is a pending suit or appeal in which the decree is not subject to appeal (*Broomfield and Devatia, JJ*) BABUBHAI VAMALCHAND v HIRALAL VAMALCHAND 42 Bom L R 1093

—O 46, R 1—Question of law arising during execution—jurisdiction of Court to make Reference—Conditions

In order that a Court shall have jurisdiction to make a Reference under O. 46, R. 1, C. P. Code, in connection with a question of law arising during the execution

of a decree, it must be shown that the decree itself was not subject to appeal. A second condition necessary to give a Court jurisdiction to make such a Reference is that the Court itself shall entertain reasonable doubt on the question to be referred. If it has come to a definite decision on the question, it has no jurisdiction to make a reference (*Rhundkar and Lodge, JJ*) MANINDRA NATH GHOSH v. MANDAR BISWAS 44 CWN 1067

-----O 46, E 1--Scope--reference by Court after giving its decision--Competency--Government's letter expressing contrary view brought to its notice after its decision--If sufficient ground for reference

O 46, R 1 C P. Code, contemplates a pend  
proceeding. If a Court gives its decision in a  
becomes *functus officio* and is not competent to



## C. P. CODE (1908), O 47

matter thereafter under the rule. Where after the Court gives its decision on a certain point a Government letter expressing a Court is brought to act upon that *vis* *functus officio*, the presses a contrary say that it enterta

## C P. CODE (1908), O. 47, R. 1.

322. RANBIR PRASAD *v.* SHEOBARAN SINGH  
186 I.C. 885 = 12 E.A. 469 = 1940 O.L.R. 184.  
—*Illness of*  
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it cause for  
47, R. 1

adjudication. See PROVINCIAL INSOLVENCY ACT, S 37. 1940 M.W.N. 420

procedure or law—If a ground—Inadequacy of service and ignorance of proceedings owing to faulty service—

or law is not a suffi-  
Though a plea of  
t be a good ground  
"cution proceedings",  
ough due to faulty

O 47, R. 1—Applicability—Second appeal—

Review of judgment—  
covery of material  
CODE, S 114 AND C

O. 47, R. 1—

Court cancelling arbitration and fixing case for evidence.

O 47, R. 1—Mistake—Nature

modified in review. (*Harper, S. M. and Sathe, J. M.*)  
INDER KUNWAR *v.* DALJIT  
1940 R.D. 517—  
1940 O.A. 1073—  
1940 O.W.N. 1072.

view—Competency—*Ex parte*  
Col. 323 RAM CHANDRA  
1940 R.D. 72 (2)

view—Error of law—Lack of  
e face of the record—Fit case

for review. See 1939 Dig Col. 323 VENKATARAYULU NAIDU *v.* VENKATARATTAMMA  
169 I.C. 320 = 13 R.M. 249

O 47, R. 1—Review—Evidence as to service  
to restore See 1939 Dig Col.  
RUL ABEDIN *v.* SHAHZADI  
1940 R.D. 48 (2)

O 41, R. 2—Review on ground  
—Granting of, by appellate Court,  
Court—Propriety.

used as a 'discovery' of a new matter to obtain under  
O 47, R. 1, a review of the decree passed under S 14  
(*Alulla, J.*) BAIJNATH MAI  
SINGH. 1940 A.L.J. 632 = 1940  
1940 R.D. 493 =

O. 47, R. 1—Grounds for review

Where a judgment debtor filed a review application

belief he | in granting the review application was entirely irregular

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C P CODE (1908), O 47, R 1

—O 47, R 1—Scope—Review—Grounds for—Sufficient reason—What amounts to See 1939 Dig Col 323 HARBALLAV IRASAD v JAGBULLAV IRASAD 12 R P 416-185 I C 769-6 B R 248-A I R 1940 Pat 7

—O 47, R 1—"Sufficient reason"—Abandonment of question involved in specific issue raised at applicant's instance as the result of erroneous view of pleader—Review—If can be granted

There will be no finality to the decision of a Court if after judgment is pronounced the parties or advocates are allowed to come forward and say that a certain argument was addressed or given up in the course of the trial as the result of their not remembering certain material facts. It will not correct to allow an application for review in such cases. Where there has been an abandonment of a specific question involved in an issue which was raised at the instance of the plaintiff in the suit, he is not entitled to apply for review of judgment on the ground that the abandonment of the question involved was the result of an erroneous view taken by the plaintiff's pleader. That would not constitute "sufficient reason" for a review under O 47, R 1 C. P. Code. (Ananth Raman, J.) VENKAYYA v SURYANARAYANA 50 L W 903-A I R 1940 Mad 203

—O 47, R 4—Scope of—Powers of Court under O 47, R 4 describes what the Court should do when

C P CODE (1908) Sch. II, Para 14

of reference filed by parties not providing for such contingency

The Court has no jurisdiction to appoint somebody as an umpire if the arbitrators differ, when the deed of reference to arbitration filed by the parties makes no

Application for extension of time—Order extending time made after award—Validity

Para 8, Sch II, C. P. Code, is wide enough to cover extension of time after the making of the award and an application for extension of time put in even after the award is made can be granted. The award in an arbitration was not made on the prescribed date and extensions of time were granted by the Court. The award was actually written on 26-8-1936, but the order of Court allowing the last extension of time was made only on 27-8-1936 though the application for extension of time was put in before the award was made.

Held that the Court was competent to pass the order

—Sch II, Para 13—Scope—Power of Court—Fees

—Sch II, Paras 1 and 3—Reference to arbitration by appellate Court—Award for amount in excess of its pecuniary jurisdiction—Validity of arbitration proceedings

Where an appellate Judge properly seized of the appeal and competent to make the reference to arbitration has made reference to arbitration the mere fact that the award directed that the sum payable by one party to the other was more than the pecuniary jurisdiction of appellate Court would not retrospectively render all previous proceedings invalid. (Young C J and Teh Chand J.) RAMINDER SINGH v MOHINDER SINGH 190 I C 339-13 R L 156-A I R 1940 Lah 186

—Sch II, Para 1—C. P. CODE

—Sch II, Para 4—Powers of arbitrators—Power of

IAKHIRAM v KISHINGHAND

I L R (1940) Kar 34-190 I C 880-A I R 1940 Sind 190

—Sch II Paras 14 and 15—Error in law—Interference See 1939 Dig Col 324 RAGHUPATI DUTT v RAM GOPAL DUTT 187 I C 80-12 R O 545

—Sch II Para 14 (c)—Taking of an erroneous view of law by arbitrator—When renders an award liable to be set aside

An award of an arbitrator cannot be set aside merely because he has taken an erroneous view of the law. What he must not do is to lay down an erroneous view of law on the facts of the case. Where

## C P CODE (1908), Sch II, Para 14

the arbitrator, the arbitrator is entitled to decide dispute between the parties on his own views of right and wrong and he need not follow the ordinary accepted views of law on the subject (*Zia ul-Hasan v. Yorke, J*)

*PHOOL CHAND v. MOOL CHAND*

189 IC 344=1940 OLR 446=

1940 AWR (CC) 327=1940 OA 629=

13 RO 58=1940 O WN 670=

AIR 1940 Oudh 405

—Sch II, Para 14—Validity of award—Omission of direction by arbitrator regarding costs

Costs are a omission of a does not vitiate (*Chand, J*)

190 IC 3

—Sch II, Para 14—Award given differs

Where an award has clearly dealt with the matter of the suit referred, the mere fact given by the award is different from what claimed does not make it void if it went beyond that (*and Tek Chand, J*)

SINGH

—Sch II, Paras 15 and 16—Construction—Decree based on award—Appeal on ground that decree is invalid—Maintainability See 1939 Dig Col 325

*RADHEY LAL v. KANHAI LAL*

185 IC 52=

12 RP 287

—Sch II, Para 15—Construction—

otherwise invalid—Meaning of—Scope of Objections to validity of reference—If complete

1939 Dig, Col 326 *KISHINCHAND v. TAKI*

ILR (1940)

—Sch II, Para 15—Delay in pronouncing award—Rights of parties

What is necessary in the case of arbitration is that once an arbitrator is appointed, the parties to the arbitration are bound by the award and cannot be proceeded to set aside the award unless it is shown to be unenforceable or otherwise invalid.

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## C P CODE (1908), Sch II, Para 20

award—Limits.

The award must be confined to the subject matter of the dispute.

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matter of the award. The question of the existence or absence of jurisdiction should be decided in accordance with the law.

*Pollock and Dasgupta, J* *YESHWANT RAO v.*

*IC 550=13 RN 51=*

*AIR 1940 Nag 191.*

*award inadmissible in*

*appeal and registration—*

*Decree based on the award—Admissibility—Decree*

*not reproducing terms of award—Copy of award—*

*If admissible to understand decree*

Although an award is not admissible in evidence for the purpose of proving the facts of the case, it is admissible for the purpose of understanding the decree.

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—Sch II, Para 15—Scope—If exhaustive of grounds for setting aside an award

An arbitration award cannot be set aside on specific grounds given in para 1. If this is not done, it could not be set aside if it had become infirm.

*PARTAP v. BECHAN*

—Sch II, Para 16—Arbitration

same as that of Commissioner—Distinction See 1939 Dig, Col 326 *RADHEY LAL v. KANHAI LAL*

185 IC 52=12 RP 287.

—Sch II, Para 17—Reference to arbitration—

Power of guardian mother of minor See 1939 Dig, Col 326 *KAGHUPATI DUTT v. RAM C*

187 IC 80=

—Sch II, Para 18—Stay of suit—

Court—No difference arising before suit—Defence that contract is induced by fraud See 1939 Dig Col 327.

—Sch II, Para 20—Decree on award—Res judicata

—Sch II, Para 20—Decree on award—Res judicata

—Sch II, Para 20—Decree on award—Res judicata

—Sch II, Para 20—Decree on award—Res judicata

## C P. CODE (1908) Sch II Para 20

The contention that a decree passed not in a suit but in proceedings under Sch II, C P. Code does not operate as *res judicata* has no force. The decree given effect to the award and must be held to be as binding on the parties as any other decree passed in a suit whether with or without consent (*Etide, J*) HANS RAJ v AMAR CHAND 42 P L R 77 =

A.I.R. 1940 Lah 107

Sch II Paras 20 and 21—Reference to arbitration by company—Award where to be filed—See COMPANIES ACT s 152(3) 44 O W N 285

Sch II Para 20 (2)—Jurisdiction—Application dealing with property situate within jurisdiction of more than one Court—Forum—Procedure as to suits—Application of S 17—See C P CODE, S 17 (1940) 2 M L J 520

Sch II Paras. 20 and 21—Jurisdiction of

whole-heartedly by the award which pass directing the delivery of partners and also the rules and frame in connection therewith the arbitrators directed that the handed over to one of the partner partners should not only pay who should execute release deeds in who was to have control of the business so doing within a stipulated time who were in default was to pay the business at Rs 1000

acting not for himself but where and that the award had gone reference is incompetent (*Ma v U PO MYA* 190 I C 713—

Sch II Para. 21—Decree award—Appeal on ground that reference is invalid—If lies

Sch II Para 21—Parties signing award—If can pick holes in it

Parties signing the award should not be allowed to pick holes in it (*Din Mahomed J*) KANSHI RAM v HARNAM DAS I L R (1940) Lah 599 = 188 I C 493 = 12 R L 531 = A.I.R. 1940 Lah 73

## COMPANIES

Sch III, Para 2—Property under management of Collector—Alienation by judgment debtor—If void or voidable—Sale and subsequent acceptance by Collector—Effect

An alienation by a judgment debtor whose property is under the management of the Collector before

the date fixed for sale, to the decree holder himself and the Collector accepts it and sale deed is registered thereafter, the sale is void in as much as the Collector's powers had not terminated before the sale became effective and the decree also had not been extinguished by them (*Niyogi, J*) SHALAGRAM v SK. MANNU 1940 N L J 616

Articles of Association—Remuneration

Deposits by employees in Bank as security—

Nature of Where certain cash deposit is made with a Bank as security for the good behaviour of an employee the amount is received by the bank on a specific under-

## COMPANIES

## COMPANIES

vided that if any member failed to pay any call or instalment on the day appointed a notice requiring him to pay that the notice shall name a and shall state in the event of would be liable to be forfeited. A third article provided that if there was non-compliance with the notice, that by a resolution of the directors a forfeiture shall be effected of the shares in respect of which non-payment is made. A fourth article directed that notice of forfeiture should be sent. Two shareholders of the com

pany — Prize winner — Sureties giving security to ent and undertaking l giving their own payment—Default amounts due to sureties under their tickets towards subscriptions due by defaulter. See 1939 Dig, Col 123 SUNDARAVARA DAN: M K MANIYER 188 IC 297= 12 B.M. 615

Management—Board of management—Power to frame by-laws delegated to Board—Gratuity to ex employee in cases not covered by by-laws—Power

resolution  
Held, that the compan persons as shareholders, to them, it must be held

the General Body acted within of Association, any act done management of the Company id not ultra vires, (2) that

(Cont) CHRISTIANITY OFFICIAL LID

02 L W 41=1940 M W N 1004=

## COMPANIES

sums of money for various expenses and the arrangement was that the creditor should deduct his advances from the spinning charges and the company was later on wound up, it was held that the creditor had agreed to pay only the balance due from him after his advances had been deducted from the spinning charges calculated at the agreed rate on only the balance  
favour (1942) 41-  
LAL & OFFICIAL  
AND WEAVING MILLS CO LTD

LAL &amp; OFFICIAL

AND WEAVING MILLS (O) LTD

1910 ALJ 626-1910 AWR. (HC) 498-  
AIR 1910 AH 490

—Wind ng up—Debt due by company not payable  
in presents—Set-off against debt due to company—  
Debtor of company taking assignment of debt due by it  
—Claim to set-off against debt due by him in liquidation  
proceedings—Sustainability—If fraudulent preference  
See 1939 D G Col 323 ANANTARAMAN v OFFICIAL  
LIQUIDATOR T N & Q BANK  
187 IC 531-12 B M 730-AIR 1940 Mad 157

—Winding up—Liquidation of Bank—Set off—  
Joint and separate debt—Principle—Individual over  
draft account and joint fixed deposit account—Claims  
in respect of, when can be set off. See BANKER AND  
CUSTOMER 1910 Comp Cas 52

**COMPANIES ACT (VII OF 1913) Ss 20 and 81—**  
*Amendment of articles of association—Failure to men-  
tion question of amendment in notice under S 81—If  
fatal*

Where a company amends the notice under S 20 by a special resolution in the notice under S 81 that the amendment of articles was to come up

number of directors should be not less than  
more than seven.

*Held*, that a resolution at a general meeting of the company providing that the number of directors should be increased from seven to ten was valid and no special resolution was necessary. (*Weston J*) TOPANDAS V. ELECTRIC SUPPLY CO. 19

1940 Comp C 133-A I R 1940 Sind 87  
—S 21—Articles—If constitute contracts  
According to S 21, the articles of association are binding on the company as well as on the members thereof. The articles constitute a contract *inter se* amongst the shareholders and where the articles have

COMPANIES ACT (1913). S. 38

—Ss. 23 and 30 (1)—“Allotment of shares”—  
Proof—Subscriber for shares in memorandum of association—Liability of—Absence of resolution allotting shares—Effect of *See* 1939 Dig Col 331. SYNEMO-  
DELAX, LTD v VANNAMUTHU PILLAI  
185 IC 712—12 B M 574

proper instrument of transfer—Ultra vires—Sale of shares by company—Legality—Right of members as shareholder—If affected

The petitioner who was a shareholder in a Banking corporation was expelled from the membership of the corporation by a resolution passed at a general meeting under the Articles of Association for wrongful conduct. On the date of the said resolution, the company had no power under the Articles to deal with the share of the expelled shareholder. Subsequent to that, the company altered its Articles by making an addition, but notice of the meeting at which the Articles were changed was not given to the petitioner. Under the amended article, the company could in effect force an expelled member to sell his share to any person at a price which is fixed under the Articles, and the company would be able to authorise a director to sign the necessary transfer instrument on behalf of such transferor if he failed to do so. Subsequently the company wrote to the petitioner stating that his share had been transferred to another and a cheque for Rs 70/ was sent to him. The petitioner wrote and said that he did not do so. S 38(1)(a) of the share

*Held*, that under S 34 (3) of the Companies Act it was not lawful to register a transfer of shares in the absence of a proper instrument of transfer duly stamped and executed by the transferor and the transferee,

the powers of the company at the date when the petitioner was purported to be expelled did not empower them to deprive him of his share and while he remained a shareholder he must also remain a member, it must follow that the resolution of expulsion had no effect and the sale of his share in law could not be carried out (4) that the petitioner never ceased to remain a

## COMPANIES ACT (1913), S 56

MADHAVA RAMACHANDRA KAMATH v CANARA

186 I O 431-12 R R 266

S 78—Notice of meeting—Con

It is true that a shareholder is entitled to adequate information as to the business, as S 78 in fact requires, but it is that unless the notice of the meeting contains necessary to meet every technical objection raised to its validity, the meeting of such notice must

DAS v YEOTMAL

Ss 81 and 20—Amendment of articles of association—Failure to mention question of amendment in notice under S 81—If fatal See COMPANIES ACT, SS 20 AND 81 A.I.R. 1910 Lah 243

S 83 B—Power of company in general meeting to appoint additional directors—When excluded

One of the articles of association of a company provided as follows: 'The directors shall have power, at any time, and from time to time to appoint any other qualified person to be a director, either to fill a vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number fixed by Art 93, and any person so appointed shall retain his office only until the next following ordinary meeting and shall then be re-elected'

Held, that the ordinary power of the general meeting to appoint additional directors

S 101—Application money not paid—Allotment of shares—Power of directors

S 101 of the Companies Act does not forbid the directors to allot shares to applicants who neglect to pay the application money, although it empowers

(Paukridge, J)

LTD. In re

188 I O 468

S 103—F

If renders shares

Col 332 VISHU

LAND CINETONE

Ss 141 A

Barred

There is nothing in the actual terms of S 141 A or of S 137 of the Companies Act to justify the inference

## COMPANIES ACT (1913), S 153.

under the Arbitration Act. (Dhida, J) LYALLPUR ANK, LTD v JAI GOPAL.

190 I O 146=

S. 152—Scope—Arbitration with intervention

Court—Arbitration Act—If applies

The scope of S 152 of the Companies Act is that the

As the Indian Arbitration

arbitration with the interven

the Companies Act does not

down in the said Act to be

in the case of such arbitration even if a com

pany is a party to it (Mitter, J) EAST BENGAL

BANK LTD v JOGESH CHANDRA BANERJEE.

I.L.R. (1910) 2 Cal. 237=41 C W N 828.

S 152 (3)—Interpretation—Reference to arbitration

by company—Award, where to be filed—Arbitration

Act, Ss 3, 4 (a) and 11 (2)—C P Code, Sch 11, paras

20 and 21

The concluding words of S 152 (3) of the Companies

Act 'in pursuance of this Act' mean that the provisions

of the Arbitration Act except S. 2 thereof, would apply

to all arbitrations in which one or both the parties are

companies irrespective of the locus of the subject matter

by the force and effect of the Companies Act, and the

the High Court or the Court of the District Judge as

the case may be (Mitter and Lodge, JJ) JHIRGAHT

NATIVE TEA CO LTD v B GUPTA

I.L.R. (1940) 1 Cal. 358=188 I O 143=

12 B.C. 651=71 C.L.J. 62=1940 Comp C 56=

41 C W N 285=A.I.R. 1940 Cal 220.

S 153—Duty of Court—Scheme approved by

the Court

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Where

the resolution approving of a scheme is shown to have

being made

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oving of the scheme

## COMPANIES ACT (1913) S 156

... of the shareholders and creditors  
of *Krishnaswami*  
DEYANI AMMAL.  
—51 L.W. 639—

—S 156—*Liability of*  
*Unpaid calls barred by limitation*  
S 156 of the Companies Act creates a new liability as regards shareholders to contribute to the assets of the

LLB (1910) 2 Cal 175  
—S 171—*Suit filed against company subsequent to winding up order—Leave to sue not obtained—Power of Court to dismiss suit on interlocutory application—Leave to continue suit—If can be granted*

If after an order for the winding up of a company is passed, a suit is instituted against the company without obtaining leave to sue under S 171 of the Companies Act, the Court has inherent jurisdiction to dismiss the suit incompetent on an interlocutory application under S 171, the winding up Court has no jurisdiction to give the plaintiff leave to continue suit in  
windin  
NARAI  
WALA  
187 IC

—Ss 179 and 183 (5)—*Construction and*  
Company—Winding up—Permission to liquidate  
sell property for price not less than a fixed  
Contract of sale by liquidator for sum in excess  
stipulated price—Sanction by Court—Sanction  
upon—Subsequent revocation of sanction—Power of  
Court—Inherent power to revoke sanction See 1939  
Dig Col. 335 KOWTHMALL NEOPANI v NAGARMALL  
MADAN GOPAL. 190 IC 67—13 B M 363—  
1910 M.W.N. 581—

—S 179—*Liquidator—*  
*Authority to endorse from*  
*by liquidator—Permissibility*  
The  
of the  
statutory  
absence of a statutory provision permit  
tion

*Held*, that the indorsements of  
notes by the agents appointed by the liquidators conveyed no title in law to the assignees  
*Held further*, that no subsequent ratification of such

## COMPANIES ACT (1913), S 185

ing up petition, it was *held* that S 185 of the Company's Act empowered the Court exercising jurisdiction under the Act to require contributories and certain others to deliver up money, etc., in their hand to the liquidator  
mentioned in S 185 of the Act and that hence the Court had no jurisdiction to pass orders for the payment asked for by the liquidators (*Allep, J*)

*claim set off*  
There is nothing in S 186 which can reasonably be construed as a general deprivation of contributories to companies in liquidation of the right of set off (*Thom, C J, Ganga Nath and Braund, JJ*) *VENARES BANA LTD v OFFICIAL LIQUIDATOR*. 1910 A.L.J. 826—  
1910 A.W.B. (H.C.) 639—  
A.I.R. 1910 AU. 544 (F.B.)  
—S 186—*Order under—If a decree within the meaning of that word in S 73, C.P. Code See C.P.*

by way of a civil suit in which the contribution is

—S 195—*Copies of depositions—Right of deponents*

A suit was filed by the Liquidator on behalf of a company for the purchase of the stock-in company by one of the defendant Liquidator applied for the of the assets of the company and in the petition in support of his application, while 95 of the Com by such examination conspiracy to

*Held* that in the above circumstances, each of the defendants was entitled to have a copy of his own deposition upon his counsel undertaking on his behalf to





## COMPANIES ACT (1913), S 231

BANK OF NORTHERN INDIA, LTD., LAHORE. *In the matter of.* 185 I O 314-1

S 231—Trust monies—Disappearance—

entered as preferential claim under S 231—

Trust monies are entirely outside the liquidator as assets. Trust monies never become assets of the company. Where certain G. P. Notes were deposited in a Bank as security for the good conduct of an employee and on liquidation, it was found that the notes in question were not traceable but the liquidator had entered the name of the depositor in the list of preferential claims under S 231 of the Companies Act, it was held that it amounted to an admission that the proceeds of those notes were included in the Bank's liquidation.

(Zia-ur-KRISHN)

1910 M W N 331 = (1910) 1 M L J 478 (1)

S 277 N—Scope and object of—Court not satisfied as to solvency—Order for stay, it can be passed. See 1939 Dig., Col 338. BENARES BANK, LTD., *In the matter of.* I L R (1939) All 938-185 I O 388-12 R A 317 (2).

S 282 B (1)—Bank taking cash security from employees and depositing same in scheduled bank—

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f

employees' cash security was deposited by that bank in a scheduled Bank which subsequently went into liquidation. The depositor bank claimed priority in respect of the deposit on the ground that the amount had been deposited for a specific purpose.

Held, that the depositor Bank held the special purpose and was required by statute therein in a scheduled bank, and that bank was not a trustee, though the depositor was. The position of the depositor bank was that of a banker keeping an account for a customer and therefore the depositor could not claim any priority. The relationship between the depositor and depositor was only that of creditor and debtor though the depositor having notice of the trust could not be a party to a breach of trust by the trustee. (Leach, C J and

## COMPROMISE

*Herwill, J.*) NAYAR MODERN BANK, LTD., PAL-

S 282 B—Scope and effect of—Company—Employees' Provident Fund deposited in Bank—Liability of Bank as trustee—Extent of. See 1939 Dig., Col. 338. EAST TANJORE E S C. EMPLOYEES' PROVIDENT FUND, OFFICIAL LIQUIDATOR, T. N & Q BANK. AIR 1940 Mad 184

COMPROMISE—Compromise decree—Suit by minor to declare it void and not binding on him—Pleader

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Consent decrees—Amount payable in instalments—Default clause—Executing Court, it will grant relief.

Where by a consent decree the decree-holder has agreed to accept by way of certain instalments an amount less than that which is actually due to him and there is a default clause in the decree, time will be

Consent decrees—Appeal.

Where as the result of an agreement between the parties which is intimated to the Court and recorded by it, the Court is invited to proceed outside its ordinary

12 R A 585-1940 A L J 38-

1940 A W R (H O) 50-AIR 1940 All 190.

Consent decrees—Binding force—Party giving right—If bound when subsequently it transpires that

## COMPANIES ACT (1913) S 209

SUNIL KUMAR CHATTERJI

—Ss :

winding up  
to be followed

S 209 and S 209 A to H of the Companies Act make

best course to adopt will be for the Court to order that a meeting of the creditors should be held and that notices of the meeting should be sent by post to the

11 (Lord Williams J) I LIGHT OF ASIA INSURANCE CO., LTD, *In re* I L R (1910) 2 Cal 325

—S 216—Right to apply—Company in voluntary liquidation—Application by Registrar of Joint Stock Companies for removal of liquidator and appointment of another by Court—Maintainability

S 216 of the Companies Act is exhaustive of the persons who are entitled to make applications and the Registrar of Joint Stock Companies has no *locus standi* to make an application to the Court for an order removing a voluntary liquidator and appointing another liquidator for a Company  
(*Asia J*)  
TRAVEL EDUCATION  
*In re*

—S 227 (2)—*Va*  
Principles upon which C

As regards the validity  
(2) of the Companies Act, the Court will usually

the company should on being wound up be transferred as a going concern, it is necessary for the company to be laid down would not

amounted to no more than the payee was due to one or more creditors winding up petition if that would be creditors who should be treated equally have been paid (*Alltop, J*) OI

## COMPANIES ACT (1913), S 231

TORS OF THE GORAKHPUR ELECTRIC SUPPLY CO., SIEMENS (INDIA), LTD

1940 A W R (H C) 491—1910 A L J 739—

A I R 1910 All 514

223—Company—Winding up—Debtor of company having cross claim against company—Surety for debtor also having claim against company—Right of

of whose against the money owing by the debtor to the company moneys due to the debtor from the company, and a surety is entitled to set off in respect of his obligation to the company

A debtor against the company moneys due him to the of another and he has need to the obligation to which is surety who company npany may (*Gentle*,

J) SUNDARAVARADAN & OFFICIAL LIQUIDATOR T N B SUBSIDIARY CO. 1939 M W N 1231—

A I R 1940 Mad 266

—S 229—Company—Winding up—Money due to bank from customer—Money due by bank on account in name of that customer and another jointly—Money in joint account solely belonging to customer—Right of set off

It is no doubt true that where there is an amount due to a bank payable by A in his individual account and an amount due by the bank payable to A and B in their

—S 230 A (5)—Discretion of Court—Application for rescission of contract—Maintainability

COMPANIES ACT (1913), S 231

BANK OF NORTHERN INDIA, LTD., LAHORE. *In the matter of.* 185 IC 314-12 R.L. 274.

—S 234—Trust monies—Disappearance—Claim entered as preferential claim under S 234—Effect

Trust monies are entirely outside the liquidation and do not vest in the liquidator as assets. Trust monies never become assets of the company. Where certain G. P. Notes were deposited in a Bank as security for the good conduct of an employee and on liquidation, it was found that the notes in question were not traceable but the liquidator had entered the name of the depositor in the list of preferential claims under S 234 of the Companies Act. It was held that it amounted to an admission that the proceeds of those notes were included in the Bank's liquidator.

(21st) KRISHN

—S 235—Powers of Court—Books in possession of manager of company—Order for delivery to liquidator—Power of Court to pass

and wilfully a party to the default to maintain the requisite cash reserve, he cannot be convicted under S 277-L of the Companies Act. (*Lakshmana Rao, f*) NEELAKANTAN NAMBIAN, *In re.* 51 L.W. 434 (1) = 1940 M.W.N. 537 = (1940) 1 M.L.J. 478 (1)

—S 277 N—Scope and object of—Court not

employees cash security was deposited by that Bank in a scheduled Bank which subsequently went into liquidation. The depositor bank claimed priority in respect of the same. It was held that the same had not been

therein in a scheduled bank, and that bank was not a trustee, though the depositor was. The position of the depositor bank was still that of a banker keeping an account for a customer and therefore the depositor could not claim any priority. The relationship between the depositor and depositor was only that of creditor and debtor though the depositor having notice of the trust could not be a party to a breach of trust by the trustee (*Leach, C f and*

COMPROMISE

*Hortwell, J.*) NAYAR MODERN BANK, LTD., PALGHAT v. OFFICIAL LIQUIDATORS OF THE TRAVANCORE NATIONAL AND QUILON BANK, LTD.

52 L.W. 512 = 1940 M.W.N. 1036 = (1940) 2 M.L.J. 559.

—S 282-B—Scope and effect of—Company—Employees' Provident Fund deposited in Bank—Liability of Bank as trustees—Extent of *See* 1939 Dig., Col 338. EAST TANJORE E S.C. EMPLOYEES' PROVIDENT FUND v. OFFICIAL LIQUIDATOR, T. N. & Q BANK, A LR 1940 Mad 184.

COMPROMISE—Compromise decree—Suit by minor to declare it void and not binding on him—Pleader

In a suit by a minor to declare that a compromise decree in a prior suit, in which he was represented by his mother as next friend, was void and not binding on

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Ahmed a  
BADAL.

—Consent decree—Amount payable in instalments—Default clause—Executing Court, if will grant

—Consent decree—Appeal.

Where as the result of an agreement between the parties which is intimated to the Court and recorded by it, the Court is invited to proceed outside its ordinary jurisdiction and pass a decree, there is no

JJ) BANWARI LAL v. RAM GOPAL  
I L.R. (1940) All 185 = 188 IC 114 = 12 R.A. 585 = 1940 A.L.J. 38 = 1940 A.W.E. (H.C.) = 1940 All 124

—Consent decree—Right—If bound when had right.

## COMPROMISE

A compromise by which a party gives up for consideration a right, which it subsequently transpires that he had is valid and binding and the right cannot prevail against the agreement of parties. The compromise of a doubtful right is a sufficient foundation of an agreement.

To avoid the compromise. The question of consideration has not much bearing because the results of litigation are uncertain, and parties enter into compromises with the object of escaping from the anxieties and uncertainties of continuing a litigation (*Varma and Manohar* v. PEOPLES CO-OPERATIVE BANK, 13 B.P. 62=).

Consent decree—Default. Where as a result of compromise the decretal amount is reduced and is allowed by the decree holder to be paid in instalments a default clause that if the instalments were not duly paid the decree holder would be entitled to execute the whole decree as it then stood cannot be treated as penal. The reduction of the decretal amount is in the nature of a concession which can be withdrawn on the default of the judgment debtor (*Din Mohammad* v. RAM KISHEN v. CHANDRA BHAN, 190 IC 513=13 B.L. 177= A.I.R. 1940 Lah 241).

Consent decree—Money and decrees agreed to be paid in

the property covered by the mortgagor failed to furnish additional specified time and thereupon applied for the sale of the property.

Held, that Court could not entertain the compromise petition in the compromise petition sale must be confirmed. (R.M.S.P.S.V. CHETTY FIRM, 1).

Consent decree—Operation as to estoppel

A consent decree based on a compromise, creates an estoppel and it would bar the trial of the questions

## CONTEMPT OF COURT

6 per cent from the date of the plaint to the date of the compromise should be paid within 6 months from the date of the decree and that in default execution was to be taken out. There was no provision that after the expiry of six months the amount shall carry interest.

Consent decree—Setting aside on ground of Procedure—Separate C.P. CODE—KESHAV RAM—185 IC 609=12 B.B. 263. Validity—Undertaking of joint and minor—Non-enforceability—If absolved from liability.

The mere fact that a joint bond executed as a part of a compromise is not enforceable against a minor executant of a bond does not absolve the major executant from liability (*Agarwala* v. SHEONANDAN GOPE v. SHAHDEO KHATIK, A.I.E. 1940 Pat 671).

Consent decree—Variation—Powers of Court—Time fixed for payment—If can be extended—Consent of both parties—Necessity. Ser C.P. CODE S 148. 1940 M.W.N. 720.

Construction—Failure to pay three consecutive instalments—Mortgage—C.P. CODE S 148. 1940 M.W.N. 720. g, Col 415. SHAMBHAR—968 (P.C.).

—K. Subeunder commission. Land comprised in patta allotted to S at revenue partition—Latter, if

lands comprised in the patta were allotted to a purchaser from him (*Mukherjee* v. HALIMUDDIN AIA v. EAKUTENNESABIBI, 190 IC 822=71 CLJ 232= A.I.R. 1940 Cal 317).

COURT—Apology—Court's power

that because an apology is offered the Court must accept it and is disarmed. A Court can refuse to accept an apology which it does not believe is genuine. It can even, when it accepts the apology, com-

nature of a contract applies. A compromise decree which merely embodied the terms of a compromise, provided that a specified sum of money with interest at

## CONTEMPT OF COURT

mit an offender to prison or otherwise punish him. Furthermore, there cannot be both justification and contempt. *Weston and Tyabji, JJ*)

Only then is it of any avail in a Court of Justice. Evidence of real contriteness. Only then is it of any avail in a Court of Justice. Everything depends upon the nature of the offence which it is tendered. *Weston and Tyabji, JJ*)

**IN JAWAHARLAL**

Article in newspaper—Printer's and publisher's liability

A printer and publisher of an article amounting to contempt of Court is liable for contempt of Court even if the article is written by a third person. *Weston and Tyabji, JJ*)

**IN FORE**

Chief Court of Sind  
The Chief Court of Sind summary way contempt of Court. *Weston and Tyabji, JJ*)

**IN FORE**

**AFFAIRS, BIHAR v MURLI MANOHAR PRASAD**  
1940 P W N 902—21 Pat LT 980

Communication to a Judge—When amounts to contempt of Court

Criticism of Court—Absence of no good faith—Misstatement and misrepresentation—Effect of

It is not possible to say that criticism of Court is protected and can be justified where there is no good faith where there are misstatements and misrepresentation and where necessarily the Court is brought into contempt and disrepute. The writer cannot claim to act in good faith when he ignores the sources of the truth which were open to him. *(Davis, C J, Lobo Weston*

## CONTEMPT OF COURT.

*and Tyabji, JJ*) **EMPEROR v P. C. TARATORE**  
A.I.R. 1940 Sind 239 (F.B.)

so much to itself but to it administers justice, that things from misrepresentation between a misrepresentation—Court when it exercises its undoubted powers of superintendence of Magisterial Courts. *(Davis, C J, Lobo Weston*

A.I.R. 1940 Sind 239 (F.B.)  
Essence of offence—Complaint for defamation in respect of allegations in insolvency petition—Distinction between threat before and after the starting of

Court lies in has done prejudicing as it is of stice that it ree and not Where a respect of

Essentials—Pendency of proceedings—Necessity for—Prejudicing mankind against person on trial

It is of the very essence of contempt of Court that the article alleged. It is not necessary which is the subject omitted for trial or before a committing

Magistrate provided he has been arrested and is in custody when the article is published.

*Dhavlal J*—It is contempt of Court to publish a newspaper article containing comments on the facts of a case which is pending before a Court or is about to come before a Court, if the comments are calculated to obstruct or interfere with the course of justice. In such cases the contempt takes the form of prejudicing kind against persons who are on their trial rail.

## CONTEMPT OF COURT

atmosphere of prejudice against them by comment which is addressed to the public at large (*Harries C J and Dhaile J*) SUPERINTENDENT AND DEPUTY BRANCHER OF LEGAL AFFAIRS BIHAR v MURLI MANOHAR PRASAD

21 Pat LT 980—  
1940 F W N 902

—*Evasion of warrant of arrest by convicted persons—Misrepresentation in revision petition to High Court*

Where the accused were convicted by the trial Court but were released on bail the same day by the Sessions Court which later on confirmed the conviction and issued warrants of arrest against them and the accused evaded those warrants of arrest and applied to the High Court in revision, making it appear to the High Court that they were in jail while in fact they were at no time in jail it was held that both their evasion and misrepresentation amounted to contempt of Court (*Bennet and Iqbal Ahmad JJ*) MUMTAZ v CHHUTWA

3410 Cr P Code and a complaint under S 500 I P Code by one against the other party—If can amount to contempt

Where during the course of a guardianship proceedings one of the parties files an affidavit containing aspersions on the other party and he thereupon files an application under S 476 Cr P Code for enquiry into the falsity of the allegations in the affidavit and for necessary action and also files a complaint against the other under S 500, I P Code neither the application under S 476 Cr P Code nor the complaint under S 500 I P Code constitutes contempt (*Collyster and Basappa JJ*) HRIS v A P BAGCHI

1940 A W R (H C) 532—

forcible taking of the rents and principal receiver has been appointed or of obstruction as receiver will amount to such obstruction (*Hederson and Khun Besh Basu*) JITENDRA KUMAR BASU

190 IC 678—41 O W N 925—71 C L J 409—  
A I R 1940 Cal 487

—*Letter to Magistrate relating to proceedings under S 107 Cr P Code pending before him*

Where a member of the Legislative Assembly wrote a letter to a Magistrate making certain suggestions with reference to proceedings under S 107, Cr P Code pending before him it was held that it grossly offended against the dignity of the Court (*Prasad and Krishna Rao JJ*)

—*Letter by party to Judge seized of the case—Imputation against Judge's impartiality—Duty of Court*

Where a party to a pending case wrote a letter to the Judge seized of the case containing the following statement you have on your responsibility caused all these proceedings against law to be taken with a view to cause

## CONTEMPT OF COURT

loss to me In case I succeed in appeal, you yourself shall be responsible for the property or the value thereof due to the above mentioned unlawful acts' It was held that it amounted to contempt of a serious nature and that it contained a threat and an imputation against the Judge's impartiality and that it was a serious matter which could not be treated lightly (*Boss J*) SUBORDINATE

—*New*

*finding in*

*Punishment—Principle of*

The principle underlying the case in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders is not the protecting of either the Court as a whole or the individual Judges of the Court from a repetition of them but the protecting of the public and especially those who may be or by compulsion are subject to its malice or mischief they will incur if the tribunal be unduly or impaired newspaper containing comments on the Magistrate in an inquest under S 176,

to the death of certain person amounts to contempt of Court If the comments impute deliberate perversity incapacity and partiality to the police on the part of the Magistrate in question For the publication of this article the publisher and editor are liable to be dealt with for contempt of Court and they cannot be allowed to go unpunished merely because they have tendered an apology (*Mysa Bu and Motels, JJ*) ADVOCATE GENERAL, BURMA v MAUNG CHIT MAUNG

187 IC 308—12 E R 330—  
41 Cr L J 445—A I R 1940 Rang 70

—*Special responsibility of*

special privilege of the special responsibility or namely that he is mind the danger of

contempt of Court—Privilege of the press—Falsity as to

The special privilege of the press is a time worn fallacy and the sooner the misconception that the press is not accountable to the law is removed the better it will be No editor has a right to assume the role of investigator or try to prejudice the Court against any person Writing and publishing an article in a news

of justice a contempt of Court (*Prasad and Krishna Rao JJ*) HAMID ALI C 342—  
C L J 169—  
(C C) 21—  
1939 O W N 1132—A I R 1940 Oudh 137.

—*Notice demanding withdrawal of abusive epithet in written statement—Threat of suit for defamation—If constitutes contempt of Court*

Where a person not a party to the suit sends a registered notice to the defendant demanding the withdrawal of an abusive epithet used in the written statement with reference to him and

CONTEMPT OF COURT.

threatening to file a suit for damages, if it was not withdrawn, it is merely the formal preliminary notice for a suit for damages if does not constitute contempt of C is quite different from putting pre-party to withdraw a plea in a civil may amount to contempt of Court  
*Verma, JJ*) BALBOO SAHAI & SHARMA 187 IC 65=12 RA 486= 1939 ALJ 1157=1940 A Cr C 14= 41 Cr L J 390=1939 AWR (HC) 887=

CONTEMPT OF COURT

trates to disregard the authority of that Court and to subordinate themselves to the alleged wishes of the  
*1939, JJ* LALBAHADUR & S. S. S. AIR 1940 Sind 239 (FB)  
Summary jurisdiction

*Ans, JJ*) RADHA KRISHNA S. RAJA RAM 188 IC

Contempt of Court is either (1) criminal contempt

—Pending  
1939 Dig, Col  
RAMENDRA NAKAYAN ROY 189 IC 200= 12 B C 354=41 Cr L J 148

willful is contempt in procedure, whereas persons who aid and abet such disobedience and are not parties to it contempt Where in a father performs the he is guilty of contempt ried the girl knowing of ) DISTRICT JUDGE, 189 IC 813= 03=1940 NLJ 157= AIR 1940 Nag 203

Magistrate Officer (Harris C I and Dhavit J)

for instance some presumptuous person states that the case of the party is sound in law and fact before such case is heard and decided An article suggesting abuse by Chief Court of its powers a desire on the part of that Court to enter into a conflict with the executive Government and containing a plain invitation to Magis-

—What constitutes—Threatening letters to opposite side counsel demanding withdrawal of allegations in pleadings—If amounts to *See* 1939 Dig, Col 344 TELHARA COTTON GINNING CO. LTD & KAC NATH GANGADHAR. 11 B (1940) Nag



## CONTEMPT OF COURTS ACT (1926), S. 2.

189 I C 58-13 E N. 43-41 Cr L J. 703-  
A 1 B 1010 27-110

## CONTEMPT OF COURTS ACT

S 2—"Subordinate Court"—Sub-L  
holding inquiry under S 176, Cr.

The words "Subordinate Court" in the Contempt of Courts Act are used in a wide sense as including any Court over which the High Court has superintendence for the purposes of S 83, Government of Burma Act, 1935, that is to say, all Courts subject for the time

## CONTRACT.

owner alleges negligence and collusion between the con- them together against two such section between one while that between the plaintiff and the other is indirect. The purpose of money damages is to put the injured party in as good a position as that in which full performance would have put him; but this does not mean that he is to be put in the same physical position. Satisfaction

—S. 2(1)—Jurisdiction of High Court—Contempt of Subordinate Court—Power of High Court to take proceedings suo motu—Application selective as being taken out by person not competent to represent Government—If bar to proceedings.

The High Court of its own motion can issue a rule calling upon a person to show cause why he should not be committed for contempt of the High Court or for

method requiring such economic waste. (Stone, C.J. and Bost, J.) RAJARAM v. MADHARAO CHITNAVIS.

1910 N L J. 486.

—Concluded agreement—Acceptance of tender subject to new conditions—Contract, if complete. See 1939 Dig. Col. 346. KUNDAY LAL v SECRETARY OF STATE

14 Luck. 710.

—Concluded agreement—Burden of proof—Option new contract.

T &amp; CO v.

2 E R 219.

All unpaid

out of or in

—S 3 Proviso—Related apology—Value.

balance due by them to the plaintiffs and asked the

Where an award is made to put up a  
to a plan and at certain rates and

6-11-1939, and the suit must therefore be stayed.  
(Kanna, J.) SUKHANANDAN RANDHIN v MANIKLAL  
42 Bom L R 1135.

—Arbitration clause—Reference to

—If includes arbitration under

See 1939 Dig. Col. 346. LADHA

## CONTRACT

SINGH v JYOTI PRASAD SINGHA DEO 186 IC 617—  
12 RC 490—AIR 1910 Cal 105

—Construction—Building contract—Lump sum or rate contract

A building contract consisted of two parts, the first

supplied. All the items were totalled together and a certain sum was given as the total of the contract. There was only one clause in the contract in which mention was made of how the remuneration of the contractor was to be calculated. It followed—The owner shall pay to the contractor

entitled to be paid market rates of the actual cost with an establishment charge of five per cent and a profit of ten per cent.

salary—Employee expected to complete certain business—Contract, if one of guarantee. See 1939 Dig, Col 347. PREM PARKASH SHARMA v FEDERAL INDIA ASSURANCE CO LTD 185 IC 100

—Privity—Absence of—Effect. 349. PHEKU RAM MALI v GANGA

ILR (1910) All 96—186 IC 51—1939 ALJ 1139—A

—Construction—Government has toll on public road—Clause prohibiting assignment of assignment without permission of Collector—Effect—Assignment without permission—If void

A term in a Government kabulyat dealing with the

Wassindrow, JJ)  
RAMGOPAL.

—Construction

If in a case of a contract in which there is an apparent

## CONTRACT.

Kunst of Killoren ) RANEEGUNGGE COAL ASSOCIATION LTD v TATA IRON AND STEEL CO., LTD  
1910 OLR 512—52 LW 591—189 IC 869—  
13 RC 58—1910 ALJ 701—1910 OA 987—  
1910 AWR (PC) 172—1910 MWN 1202—

suppliers by implication a not to take lime-pliers and that the breach of such covenant could be restrained by an interlocutory injunction, although it was contained in a contract for the sale of goods (Panchridge, J.).

ILR (1940) Nag 208

—Mercantile contracts—What is

Where both parties are engaged in business and

—Modification—Statutory and contractual obligation—Difference between

There is a vast difference between the obligations created by the contract on the former, mutual agreement. ATH v SECRE CWN 1069

it at any rate in

—Bank in liquidation—Official manager and Official assignee—Suit by

depositor against manager—If maintainable. If the bank went into liquidation and the Official Assignee took misfeasance proceedings against the manager of the Bank and in the course of those proceedings the Official Assignee effected a compromise with the Official

## CONTEMPT OF COURT

atmosphere of prejudice against them by comment which is addressed to the public at large  
*J and Dharle, J*) SUPERINTENDENT  
 BRANCHER OF LEGAL AFFAIRS,  
 MANOHAR PRASAD

—*Evasion of warrant of arrest by*  
 —*Misrepresentation in revision petition to High Court*  
 Where the accused were convicted by the trial Court but were released on bail the same day by the Sessions

they were in Jail, w  
 Jail it was held th  
 sentation amountec  
*Iqbal Ahmad, J J*)  
 LLR (1940) All  
 1940 A W

—*Guardianship*  
 S 476 Cr P Code  
 I P Code by on  
 amount to cont m  
 Where during the  
 sngs, one of the par  
 persons on the other party and he thereupon files  
 an application under S 476 Cr P Code, for enquiry into  
 the falsity of the allegations in the affidavit and for  
 necessary action and also files a complaint against the  
 other under S 500, I P Code neither the application  
 under S 476, Cr P Code nor the complaint under  
 S 500 I P Code  
*(Collister and Baijap*  
*v A P BAGCHI*  
 1940 A WR

—*Interference with receivers*  
 It is well settled that when receivers are appointed by  
 a Court interference with them and obstruction to  
 them will amount to contempt of Court and that the  
 forcible taking of the rents and  
 receiver has been appointed or of  
 sion as receiver will amount to  
 obstruction (*Henderson and Khundkar JJ*) TRID  
 BESH BASU v JUTENDRA KUMAR BASU  
 190 IC 678=41 OWN 925=71 O LJ 409=  
 AIR 1940 Cal 487

S  
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 ref  
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 fere in such a manner in the course of administration of  
 criminal justice (*Thomas, C J and Radhakrishna, J*)  
 DT MA  
 1

—*Letter by party to Judge seized of the case—*  
*Imputation against Judge's impartiality—Duty of*  
*Court*

Where a party to a pending case wrote a letter to the  
 Judge seized of the case containing the following state-  
 ment 'you have on your responsibility caused all these  
 proceedings against law to be taken with a view to cause

## CONTEMPT OF COURT.

loss to me In case I succeed In appeal, you yourself

ORDINATE

—New

In which persons  
 Courts and inter-

be allowed to go unpunished merely because they have  
 tendered an apology (*Mya Bu and Mosely, JJ*)  
 ADVOCATE GENERAL, BURMA v MAUNG CHIT  
 MAUNG 187 IC 308=12 ER 330=  
 41 Cr LJ, 445=AIR 1940 Rang 70

—*Newspaper articles—Special responsibility of*

there being any special privilege of the  
 on the other hand a special responsibility  
 ditor of a newspaper, namely that he is  
 always to bear in mind the danger of  
 prejudicing the course of justice by the publication of  
 articles in his newspaper which though innocent in  
 appearance may easily be so read by members of the  
 (Thomas,  
 IS AHMAD  
 WN 1197.

—*Newspaper articles—When amounts to*  
*contempt of Court—Privilege of the press—Fal-*  
*lacy as to*

The special privilege of the press is a time  
 worn fallacy, and the sooner the misconception  
 press is not accountable to the law is  
 the better it will be No editor has a  
 assume the role of investigator or try  
 dice the Court against any person  
 and publishing an article in a news-  
 cely to prejudice the course of justice  
 to a p

ot Court (T  
 J) DISTRICT  
 GARDISH

1939 OW

—*Notice*  
*epithet in written statement—Threat of suit for*  
*defamation—If constitutes contempt of Court*

Where a person not a party to the suit sends a  
 registered notice to the defendant demanding  
 the withdrawal of an abusive epithet used in the  
 written statement with reference to him, and

## CONTEMPT OF COURT.

threatening to file a suit for damages, if it was not withdrawn, it is merely the formal preliminary notice for a suit for damages & does not constitute contempt of Court. It is quite different from putting a party to withdraw a plea in a civil case may amount to contempt of Court.

*Verma, JJ* BALDEO SAHAI v SHARMA 187 IC 65=12

1939 A L J 1157=1940 1  
41 Cr L J 390=1939 A W R (H C) 887=  
A I R. 1940 All 114

## Pending proceedings—Speech at meeting

The question in all cases of contempt on pending proceedings is not whether the publication does interfere but whether it tends to interfere with the due course of justice, and on the same principle it is a contempt of Court to make a speech tending to influence the result of a pending trial whether civil or criminal, or to deliver a speech at a meeting (*Thomas, C J and Ratha Krishna, J*) RADHA KRISHNA v RAJA RAM 188 IC 11

Pending proceedings—*1939 Dig.*, Col 342. BISHABATI DEVI v KUMAR RAMENDRA NARAYAN ROY 185 IC 286  
12 B C 354=41 Cr L J 14

Practice—Affidavit in support of application clerk—Propriety of—Duty to set affidavit sworn to responsible officer

responsible officer (*Harries, C J and Dhavle, J.*) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS BIHAR: MURLI MANOHAR PRASAD

## CONTEMPT OF COURT

strates to disregard the authority of that Court and to subordinate themselves to the alleged wishes of the

## Summary jurisdiction

Summary jurisdiction in contempt is a powerful weapon in the hands of the Court and is to be used sparingly. But its use must in large part depend upon those who by their misconduct invite its application (*Davies, C J., Lobo, Weston and Tyabji, JJ*) ENFEROR v P C TARAPORE A I R 1940 Sind 239 (F B)

What may amount to—Prohibitory order—Disobedience by party and stranger, difference—Marriage in spite of prohibition

Contempt of Court is either (1) criminal contempt

private injury. Offending a party to an action who

HINDWARA v BASORI LAL 189 IC 813=  
13 E N 80=41 Cr L J 803=1940 N L J 157=  
A I R 1940 Nag 203

What constitutes—Intention—Relevancy of

Any act done or writing published which is calculated

case of the party is sound in law and fact before such case is heard and decided. An article suggesting abuse by Chief Court of its powers, a desire on the part of that Court to enter into a conflict with the executive Government and containing a plain invitation to Magis-

What constitutes—Threatening letters to opposite side counsel demanding withdrawal of allegations in pleadings—If amounts to *See 1919 Dig.*, Col TELHARA COTTON GINNING CO LTD v NATH GANGADHAR. I L R (1940)



## CONTRACT

SINGH v JYOTI PRASAD SINGHA DEO 186 I C 617—

12 B C 400 AIR 1910 Cal 105

## CONTRACT

Russell of Killowen ) RANEEGUNGE COAL ASSOCIA-

12 B C 400 AIR 1910 Cal 105

of ten per cent

contract for the sale of goods (Panchridge, J.)

ASSURANCE CO LTD 185 I C 122

—Privy—Absence of—Effect See 11

319 PHEKU RAM MALI v GANGA PRA

ILE (1910) All 98—188 I C 513—

1939 A L J 1139—AIR

—Construction—Government kabulta  
toll on public road—Clause prohibiting suv leasing or  
assignment without permission of Collector—Effect—  
Assignment without permission—If void

A term in a Government kabulyat dealing with the

—Modification—Statutory and contractual pili  
gation—Difference between

There is a vast difference between the obligati

Wasservod JJ)  
RANIGOPAL.

—Constructio

If in a case of a contract in which there is an apparent | depositor against manager—11

## CONTRACT

Liquidator by which he undertook among "to adjust or satisfy any claim" of certain the Bank among others and to indemnify Liquidator against any such claim. A passed in terms of the compromise. It having made default in satisfying the claim

*Mahomed, J*) SUKJAN SINGH v NANAK CHAND  
A.I.R. 1940 Lah 471

—Sale of goods—Goods supplied subject to buyer's approval—Buyer's right to reject goods

—Specific performance—Agreement to execute pucca deed of transfer of house—Right to specific enforcement—Construction of contract

owner of the house, and in case the plaintiff did not

defendant No 1 was called upon to give a proper document and get it registered but she did not do so. The plaintiff thereupon sued for specific performance of the agreement

*Held*, on a construction of the agreement that (1) on failure of the first defendant to give a pucca writing when demanded there arose in the plaintiff an immediate right to demand a conveyance in her favour of the property as an absolute owner, (2) that the two conditions of the agreement were neither inter dependent nor indivisible so as to bar the claim for specific performance (*Kania and Wastoodrow JJ*) MANILAL MA CANLAL v BAI CHANPA 189 I.C. 106=13 E.B. 41=42 Bom L.R. 382=A.I.R. 1940 Bom 193

## CONTRACT ACT (1872), S 17.

respondents instituted on 4-8-1933, the appellant pleaded that the suit would not lie as one of the vendors was a minor. The latter, however, had become a major at the date of suit

*Held* that having regard to the fact that the appellant had remained in possession of the land and never repudiated the contract, the right to repudiate must be deemed to have been waived and that the plaintiffs were entitled to a decree, as the third respondent had become a major and there was a good title (*Leach, C. J. and VEN*)

## LEASE—THIRD PARTY IN POSSESSION

1940 O.A. 801  
CONTRACT ACT (IX OF 1872), S 2 (d)—Consideration—If may move from third person

The consideration may move from a third person and need not necessarily move from the promisee (*Dunkley, IN*)

71 C 875=12 E.B. 345=  
A.I.R. 1940 Rang 91  
relative scope of—Contract  
Dig, Col 352 MAHANTH  
66 I.A. 198=  
70 C.L.J. 556 (P.C.)

S 9 of the Contract Act proclaims the existence of promises (*Davis*) RATA  
1939 A.M.L.J. 137

of—Old man proved to be  
mild dementia at particular  
time—Transactions by  
y—Onas See 1939 Dig,  
NAICKER v SRINIVASA  
A.I.R. 1940 Mad 73

DEBI v C

—S  
See 1938

—S 16—Undue influence—Proof—Inference from circumstances—When justified—Mortgage executed by young Mahomedan brother just come of age at the instance and for the benefit of his elder brothers—Presumption of undue influence See 1939 Dig, Col 353 AHMAD IBRAHIM SAHIB v MEYVAPPA CHETTIAR  
A.I.R. 1940 Mad 285

—Ss 17 and 19—Building contract—Decision of owner's agent regarding rates and measurements to be final—Latter passing bill for payment—Mortgage exe

## CONTRACT ACT (1872), S. 19.

been granted in respect of it. The conclusiveness of the architect's certificate is however subject to a possible exception in case of fraud or collusion. S. 17 read with

clude an element of transfer such as sales or mortgages. The representations must however be parties to the transfer or his agent building contract agreed to accept rates and measurements by the owner to be final. After completion of passed a final bill for payment. In on aforesaid bill the owner executed premises. In the suit by the mortg decree for sale was passed. The m avoid the mortgage on the ground th of experts the original bill containe that he was misled into accepting i prayed for fresh calculation of origin

*Held*, that in the absence of circumstances sufficiently

## CONTRACT ACT (1872), S. 23

cutte criminally, then the agreement is void. If the agreement as to the civil liability changes the nature or the extent of the original civil liability, for example if

an agreement not to prosecute. The additional ad-

—S 23—Champerly—Considerations to be borne in

An act may involve a person in a civil as well as a | forceability. See REGISTRATION ACT, S. 17 (1) (b)

42 Bom.L.R. 165

Abkari Sale—Bidder  
not after sale and  
' running of business

bidder at an Abkari  
p, held on 8-8 1932.



## CONTRACT ACT (1872), S. 23

## CONTRACT ACT (1872), S. 23.

—S. 23—Public policy—Agreement in consideration of giving false evidence.

Where a litigant has agreed to give property to certain person in consideration of his giving false evidence on behalf of the plaintiff, the agreement is void as the consideration for public policy and is therefore illegal.

12 B. 311—A.I.R. 1940 Rang.

—S. 23—Public policy—Comb

—Agreement not to bid against one another in respect of Government

"Public policy" is that principle under which freedom of

The plaintiff's grandmother who was doing scavenging work in 230 houses borrowed certain sums from the defendant under promissory notes and arranged

right to do scavenging  
—If can be recognised  
consideration—Validity  
der.

income  
of the  
by her  
Rs. 45 a  
missory

in excess of the  
missory notes under  
the defendant to  
c 198 houses or in  
the value thereof,

and for a declaration that the plaintiff alone had the right to carry on the scavenging work in those 198 houses and to restrain the defendant from interfering with the plaintiff's work. It was no contract between the plaintiff and the owners of the houses in which the former was employed. In those houses the plaintiff and her sons nor the scavenger were parties to the contract with the owners or any other person to employ the plaintiff or to

agreed  
for  
certa  
loss  
perfe  
rend  
//)

GOPAL, 42 Bom L.R. 750—A.I.R. 1940

—S. 23—Public policy—Marriage pro Child Marriage Restraint Act performed State to evade Act—Decree for payment of wards marriage expenses—Enforceability India—Bar of public policy

It is well established that the power of the court to decline to enforce contracts and other instruments on grounds of public policy is a power which is confined within the limits laid down by authority. The court would clearly not enforce a contract which implied the enforcement of an act which was contrary

received by the defendant  
plaintiff at all, but was  
holders in her turn as  
scavengers, and the  
ng else except a traffic  
in the rights of third  
what scavengers they  
(J.) RAMANMURTHY v.  
1940 M W N 342—  
A.I.R. 1940 Mad 558

irability—Mortgage to  
n officer—If can be im-

## CONTRACT ACT (1872), S 23

S 23 is not concerned with motive. It is confined to the object of the transaction and not to the reasons or motives which prompted it. The law does not prevent even the most degraded of men from having their own friends and from receiving gifts from them whatever the motive of the donors may be, provided the object is not to induce or encourage the commission of an illegal or an immoral act. *B* a Hindu, borrowed a certain amount from *A* in order to bribe a certain officer. After the bribing was done and completed *B* obtained a loan from *C* in order to pay off *A* and executed a mortgage in favour of *C*.

*Held*, that the purpose of the mortgage loan was to effect an illegal purpose. Such illegal purpose had been effected had been effected. The mortgage loan was at worst a loan designed to enable the borrower to pay back a lender who could not have sued the borrower. *C* could not sue *B* and the effect of the

was a loan that fell within the prohibition preventing

—S 23—*Stifling prosecution—Ag file suit in consideration of forbearance forgery—Legality of—If bar to suit*

In a claim preferred by the plaintiff under O 21 R 58, C P Code the plaintiff produced a *hatchilla*. The defendants case was that this was a forged document.

*Held*, that the agreement in question was an agree

## CONTRACT ACT (1872) S 24

the plaintiff for recovery of the amount which the defendant had agreed to pay,

*Held* that the agreement was void being against public policy and the plaintiff's suit must therefore fail (*Varma J*) JAGGILODU: MATTA BYRAMMA

6 Cut L T 70

—S 23—*Stifling prosecution—Sale deed in con*

executant cannot therefore be permitted to recover either the unpaid purchase money or the property dealt with under the sale deed. No refund of money or return

13 R P 51=1940 P W N 878=

A I R 1940 Pat 573

—S 23 and Transfer of Property Act S 6

(h)—*Transfer in consideration of past cohabitation—*

PARBATI I L R (1910) All 371=180 I C 578=13 R A 205 1940 A W R (H C) 269=

A I R 1910 All 385

—S 24—*One consideration for three portions of which is illegal—Whole contract—*

*ts C J* —If there is one entire consideration for two several contracts and one of the contracts is for the performance of an act the whole is void. Thus where one is to be paid for the doing of a legal and an illegal act the whole contract is void. And if a contract or promise be founded upon a legal

her in person  
appeal was  
In a suit by

v C T M N NACHIAPPA CHETTYAR  
1939 Rang L R. 711=186 I C 709=  
12 R R. 283=A.I.R. 1940 Rang

## CONTRACT ACT (1872), S. 25.

—S. 25 (3)—*Acknowledgment of a Khata Baqi after limitation—Suit on, if lies.*

The acknowledgment of a Khata Baqi after the period of limitation in respect of the original debt will amount to a promise to pay under Act, and a suit thereon is main  
MOHAN LAL v. RAM CHANDRA

—S. 25 (3)—“Agent generally  
rised”—Minor—*De facto* guardian—Power to renew time barred debts See 1939 Dig. Col. 356 NAROT-  
TAMPAS v. CHITTA BHAGWAN SANG

186 I C 66=12 E B. 294  
—S. 25 (3)—Applicability See 1938 Dig. Col  
442 RAMPRASAD v. ANANDI

I L R (1940) Nag 441

—S. 25 (3)—*Applicability*  
The implied promise to pay which is contained, in all

consideration for the implied promise to pay. S. 25 (3)  
will not come to the aid of the person relying on such  
acknowledgment (*Stone C J and Clarke J*)  
SHEOJIRA

—S.  
parties—  
ing of

The words “by the person to be charged therewith” in  
S. 25 (3) of the Contract Act are

(*Asrar Rahman, J.*) GOVINDA NAIR v. AGHUIAN  
NAIR

—S.  
Words  
1939 Dig

—S.  
—*Expre*  
*gives cal*

An e  
sufficient  
regard  
promise

If a person promises to pay a portion of a

## CONTRACT ACT (1872), S. 30

Where the debtor proposes in a letter to pay a time  
barred debt by monthly instalments and remits some of  
the instalments as proposed, the acceptance of the instal-

—S. 25 (3)—*Promise to pay—If must be unequivocal* See 1939 Dig. Col. 356. JOTI PARSHAD v.  
RAHAM ALI. 186 I C. 718=12 E L 415

—S. 25 (3)—*Scope—Promise—If must be express*  
*promise or may be implied.*

The promise referred to in S. 25 (3) of the Contract  
Act must be an express one and cannot be held to be  
sufficient if the intention to pay is unexpressed and has  
to be gathered from a number of circumstances. In  
other words there must be a distinct promise to pay  
within the provi  
(*an, J.*) GOVINDA  
110 M W N 443=  
1940 Mad. 678=  
(1940) 1 M L J 682.

—S. 30—*Applicability—Distinction between the*  
*positions of a kachcha arhtiya and pakka arhtiya*

and it is mutually agreed that there is to be no delivery  
then the contract is void under S. 30 of the Contract

question of importance  
contract. There are  
de through the agency  
ier made with *pakka*

*arhtiyas*. The position of a *kachcha arhtiya* is that  
itself, so  
emunera-  
position  
e makes  
s not act  
rms of a  
dant had  
'here was  
delivery  
one party  
a wager  
the Con

tract Act

—*Gambling transaction—*  
*ansaction—Person engag-*  
*ing to pay differences—*  
*Absence of arrangement or agreement between buyer and*

tioned. (*Davies*) RATAN LA

—S. 25 (3)—*Promise to p*  
*and of instalments proposed as*

**CONTRACT ACT (1872), S 30**

fact The plaintiffs who were brokers were buying in the market for their client, the defendant, and the method of remunerating the plaintiffs was by a small difference in the price. The defendant did not know in any particular transaction who was the party selling to him. There was never any exception taken to the

of S. 30 of the Contract Act

*Held*, though the plaintiffs and the defendant understood that the transactions were to be on differences, the plaintiffs were acting as brokers that is as agents for the defendant, and the plaintiffs were not really the principals. The defendants who did not know who the

—S 30—Wagering contract—Relationship agency—Rights of agent. *See* 1939 Dig. Col.

joint promisees or co mortgagees—Realisation by one assignee of his share of mortgage debt—If on behalf of all—If against or constructive trustee for others. *See* 1939 Dig. Col. 357. **BAPANNA v JAGGIAH**  
188 I C 710—13 R M 66

—S 45—Joint mortgagees—Suit by one only—

—S 51 and Sale of Goods Act (1930) S 32—Contract for sale of goods—Suit for damages for breach—Proof of readiness and willingness to perform—Delivery of shares at seller's option—Notice to deliver, if and when necessary

In a suit by the buyer for damages for breach of a contract for sale of goods, it is incumbent upon him to satisfy the Court that he was ready and willing with the money or had the capacity to pay for the goods, or that

**CONTRACT ACT (1872), S 62**

he had at all events made proper and reasonable preparations and arrangements for securing the purchase money. Readiness and willingness to perform includes ability to perform. Where delivery of shares is to be at the seller's option. If delivery is made during the currency of the option, then the seller should give to the notice to deliver and a payment. Where the earlier than the contract and deliver on the day ready and willing to for them on that day. **JAGANNATH SAGAR**  
1940 Rang L R 593—  
A I R 1940 Rang 284.

**NAL v AARON & CO**

—S 55—Time, when essence of contract—Extension, where time is the essence—Effect

In cases other than commercial contracts the ordinary presumption is that time is not of the essence of the contract. In the case of contracts where time is originally the essence, so because one of a short extension

of contract—

the essence of a contract is a question of the intention of the parties to be gathered from the terms of the contract. Where there is an express provision that time is of the essence of the contract and at the same time provision for extension of time in certain contingencies and for the payment of a fine or penalty for every day or week the contract undertaken under the contract remains unfinished

186 I C 855—12 R M 643—6 R M 601—  
A I R 1940 Pat 62

—Ss 62 and 39—Parties to hand note agreeing to enter into new contract—Debtor not carrying out in entirety his part of agreement—Right of creditor to sue on hand note. *See* 1939 Dig. Col. 359. **BABULAL MARWARI v TULSI SINGH**  
A I R 1940 Pat 121

—S 62—Scope. *See* 1939 Dig. Col. 360. **MAHARAJA BHAGAWATI**  
186 I C 530

## CONTRACT ACT (1872), S 63

—S 63—Remission of part of debt—Consideration—Necessity *See* 1939 D G, Col 360 RAMASWAMI v RUDRAPPA 187 I C 338—12 R M 715

—S 63—Scope—Remission by debtor about to become insolvent—Validity as against Official Receiver

the verge of insolvency purports to make a remission the validity of that transaction as against the Official Receiver cannot be determined merely with to S 63 of the Contract Act Where the rem without consideration it would obviously be in as against the Official Receiver in view of S 53 of the Provincial Insolvency Act Standing surety for the debtor in connection with certain loans and joining him in executing a mortgage to his creditor cannot in law amount to consideration so as to validate a remission by a debtor on the verge of insolvency as against the Official Receiver (*Varadachariar and Gentle, JJ*) VARASIMHARAJU v OFFICIAL RECEIVER, LAST 1940 M W N 495—A I R 1940 Mad 737

—S 65—Applicability—Arrangement between scavengers permitting one to do scavenging work in houses in which other was doing—Payment received by

—S 65—Applicability—Contract by Municipality not comply—sue for rest MADURA

—S 65—Applicability—Contract by trustee in contravention of TRUST favour contract

act on the principle of quantum advantage has been received (*Davis J C and Weston J*)

## CONTRACT ACT (1872) S 65

with Municipal Act *See* U P MUNICIPAL ACT, S 97 1940 A W R (H C) 243

—S 65—Contract—Duty of Court to give effect to provisions S 65 of the Contract Act provides very just and very

—S 65—Contract of sale found to be void—*See* 1939 E PORE 1 R L 490 *derided*

## —Limits of the rule

It cannot be said that in every case in which relief is granted to a minor he should be made to return the benefit derived by him from the contract Nor could it be said that in no case can any person who seeks to avoid a contract entered into by him in his minority be made to pay compensation to the other party No hard and fast rule can be laid down on the point The absence of fraud or misrepresentation on the part of the minor coupled with the fact that

minority of the "entire the ven- compensation J ) BACHAI 1 Luck 265—2 R O 219—1939 O W N 1112—1939 A W R. (C C) 323—A I R 1940 Oudh 119

—S 65—Scope—Procedure—Relief under—If available to party suing as plaintiff to enforce agreement

Act agree th it him "oce

or a be be an defendant can surprise in the ga Iyengar J ) AHMED HUS

## CONTRACT ACT (1872), S. 68

tion to the other party to the attempted contract but afterwards discovers what he had no idea of before, that

—S 68—Contract by guardian of minor—Liability under—Creditor advancing money for necessities of minor—Right of reimbursement—Right to interest—Limitation for suit *See* 1939 Dig, Col 362 RAJA RATHNA CHETTIAR v SHAIK MAHBOOB SAHIB

I L R (1940) Mad 27=190 IC 101=13 R M 367=A I R 1940 Mad 106

—S 68—Marriage expenses of male Hindu minor—Advances for—If amounts to supplying him with necessities

1940 N L J 358=A I R 1940 Nag 327

—S 69—Applicability—Payment by purchaser of

Property later declared to belong to another—Right to reimbursement of revenue paid by purchaser

In execution of a decree on a mortgage certain properties were put up for sale and purchased by the plain

the sale in his favour was ineffectual and that the lands

Held, that the plaintiff at the time of the payment,

properties in Court sale, and that it affect his right to recover the money who should have paid the *kandaya ant Singaratelu Mudaliar, JJ*)  
v MAHANTADEVARU

—S 69—Applicability—Mortgage—Mortgagee obtaining land in compromise—Arrears of land revenue due by mortgagor—Payment by mortgagee—Right to be reimbursed

Where a mortgagee obtained a land in compromise of his suit on the mortgage and it was threatened to be sold

## CONTRACT ACT (1872) S. 72

the land revenue (*Puranik J*) ANRIT WAMAN v MAHADEO 190 IC 691=13 R N 109=

188 IC 116=12 R C 648

—S 69—Applicability—Tenant paying rent due to landlord—Rent made payable by sub tenant under re-

—S 69—Right to claim benefit under—Condition that may give rise to

The liability for which payment may be made under

Any person substituted to the position of the defendant would also be equally liable (*Iqbal Ahmad and Bay*)

—S 69—Words 'interested in payment of money'—Scope

The words 'interested in payment of money' may in

—S 70—Applicability—Mahomedan minor—

In the circumstances set out in S 70 of the Contract Act a minor who is in made liable on such a is nothing more than a certain circumstances

—S 72—Applicability—Money paid into Court to set aside Court sale in execution of decree—Decree subsequently set aside or reversed—Claim for refund of money paid into Court—Maintainability—Right

**CONTRACT ACT (1872) S 72**

restitution See C P CODE S 144

(1940) 1 M L J 340

—S 72—*Applicability—Payment of taxes and licence fees to Panchayat Board under mistaken belief that properties and business are situate within that Board—Claim for refund—Maintainability*

A person who has paid tax Panchayat Board under the r properties or business in respec fees were paid were situate that Board must be held

—S 72—*Payment of tax to municipal council—Tax paid without formal protest—If voluntary payment—Right to sue for refund on ground of levy being illegal*

disentitle him from suing for refund of the tax paid on

and can be recovered and  
(Nageswara Iyer and 2  
TOWN MUNICIPAL COUN  
JUNDAPPA

—S 72—*Scope—Ta  
misapprehension as to li  
Maintainability*

made by mistake of law cannot be covered (Hornwall,  
J) RAMJEE KAO v MUNICIPAL COUNCIL MASULI  
PATAM 1940 M W N 956 52 L W 437=  
A I R 1940 Mad 956=(1940, 2 M L J 469

—S 73—*Applicability—Partnership—Breach of covenant by partner—Claim for damages by another partner—Measure of damages—Calculation on basis of wilful default—If justified*

be rejected  
actual  
partnership

**CONTRACT ACT (1872). S 73**

WARILAL v SHAIKH SHUKRULLAH

19 Pat 1=188 I C 337=6 B R 653=  
12 R P 697=A I R 1940 Pat 204

—S 73—*Breach—Damages—Doctrine of frustration—Applicability of*

The doctrine of frustration of contract only applies if

of his contract  
between Mahomed  
NWARI LAL v  
19 Pat 1=  
12 R P 697=  
1940 Pat 204

—S 73—*Breach—Damages—Interest—Light to—Money due by assignee of decree to assignor under deed of assignment—Interest—Award of See 1939 Dig. Col 345 SHEONARAIN PRASAD SINGH v A I R 1940 Pat 155*

*Damages—Liability—Doctrine of—Partnership—Damages caused by wilful default of partner—Claim to damages*

is of great importance where  
become partners and one of  
e other to do all the work and

Mahomed Noor and Manohar Lal JJ) BANWARI  
LAL v SHAIKH SHUKRULLAH 19 Pat 1=  
188 I C 337=6 B R 653=12 R P 697=  
A I R 1940 Pat 204

—S 73—*Breach—Measure of damages—Build ing contracts See CONTRACTS—BUILDING CON TRACTS 1940 N L J 486*

—S 73—*Breach of contract by buyer—Measure of*

act—Measure of damages  
sue by party committing

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## CONTRACT ACT (1872), S 73

damage which flows from the contract itself (*Dunkley, J*)

ord:  
him

—S 73—Breach—Sale of goods—Breach by purchaser—Right to defendant to set off of proof

Where a contract is the default of

—S 73—Breach—Sale of goods—Buyer becoming

## CONTRACT ACT (1872), S 124

Where it agreed to pay money by various instalments

—S 73—Scope—Landlord and tenant—Covenant by tenant to pay Government revenue—Default—Sale—Landlord failing to avert though aware of sale—Damages—Measure of

Every person who has a right to damage for breach of contract must take all reasonable steps to mitigate the

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case  
of default was not necessarily penal (*Lobo and Weston,*

having regard to the particular circumstances of each case (*McNair, J*) *KHIRENDRA NATH v SECRETARY OF STATE* 44 O W N 1069

—S 73—Breach—Sale of goods—Default by purchaser—Deposit or earnest—Forfeiture—Right of vendor—Vendor equally in default—Effect

In the case of mercantile contracts even in respect of sale of goods, it has been customary in India to receive

would be irredeemable after certain time *See 1907 Dig, Col 364 DWARIKA v BHAGAWATI* 186 I C 530=12 R E 270

—S 74—Scope and effect of—Power of Court to award reasonable damages—Proof of actual loss—If necessary

S 74 boldly cuts the most troublesome knot in the common law doctrine of damages Whether actual

it is entitled to the stipulated  
SHAMSHU-  
89 I C 785=  
1940 Sind 1

—Contract of Distinction—after to save

former from loss occasioned in effecting transactions of constituents to be introduced by latter—If indemnity or guarantee

A contract of guarantee as defined by S 126 involves three parties the creditor, the surety and the principal debtor and it involves a contract to which those parties are privy The contract need not be embodied in a single document, but there must be a contract or contracts to which the three parties are privy There must be a contract first of all, between the principal debtor and the creditor That lays the foundation for the whole transaction Then there must be a

—S 73—Interest as damages—Detention of debt Under S 73 of the Contract Act interest cannot be allowed by way of damages for wrongful detention of debt (*Radhakrishna J*) *BABU LAL v DURGA PRASAD* 188 I C 184=12 R O 421=

1940 O W N 581=1940 O A 512=1940 O L R 328=1940 A W R (C O) 267= A I R 1940 Oudh 308

—S 73—Penalty—Agreement to pay money by instalments—Provision for forfeiture of payments made, in case of default—If a penalty—Relief that could be given



**CONTRACT ACT (1872), S. 124**

between the surety and the creditor, by which the surety guarantees the debt, and the consideration for that contract may move either from the creditor or from the principal debtor or both. But if those are the only contracts, the case is one of indemnity. In order to constitute a contract of guarantee there must be a third contract, by which the principal debtor expressly or impliedly requests the surety to act as surety. Unless that element is present, it is impossible to work out the rights and liabilities of the surety under the Contract Act. It is impossible to imply a promise by the principal debtor to indemnify the surety, unless the principal debtor is privy to the contract of suretyship. An agreement between a broker and a sub-broker by which the latter agrees to save the former from any loss which he would suffer by reason of his effecting transactions at the request of the sub-broker for the constituents introduced by the sub-broker, the constituents being unascertained at the time and knowing nothing of the guarantee, is a contract of indemnity under S. 124 and is not a contract of guarantee falling under S. 126 (*Beaumont, C. J. and Kania, J.*) **RAVICHANDRA LOYALKA v SHAPURJI DHOWNAGREE**

**I L.R. (1940) Bom 522=42 Bom L.R. 550=**  
**A L.R. 1940 Bom 315**

—Ss 124 and 125—Contract of indemnity—Right of sub-creditor—*Contract of indemnity—Right of sub-creditor*  
Reas.  
83 of the contract  
the debt

debtor—  
Past debt  
guarantee  
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surety  
sion as  
of the A  
benefit to the principal debtor  
for a bond of guarantee  
Hassan J. G.  
KHAN

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—S 128—  
for interest.

Under S. 128 of the Contract Act

guarantee to him  
pal amount of the  
**NATH v BONEB**

—S. 128—  
debt—Liability  
ing point.

Where a pe  
ggee's money  
mortgaged by  
would be entit  
from him, the

**CONTRACT ACT (1872), S. 151**

the mortgagee was first to proceed against the mortgaged property and was to take every step that could be taken against it to realise his money, and the time begins to run against the surety only when the mortgagee fails to realise the whole amount due to him from the mortgaged property and not from the date when the mortgage money becomes due under the mortgage deed. (*Bennet and Verma, J.J.*) **DALJIT SINGH v HARKISHAN LAL**  
**187 I.C. 152=**  
**12 R.A. 474=1940 A.W.R. (H.C.) 14=**  
**A.L.R. 1940 A. 116=1939 A.L.J. 1137.**

**365. MAHANTH SINGH v U LA VI. 66 I.A. 198=**  
**70 C.L.J. 656 (P.C.)**

—B 143—Applicability—Surety for debtor to bank—Bank is bound to disclose state of account of debtor to surety—Agreement by surety to be liable in spite of condition between lender and debtor—Effect of

S. 143 of the Contract Act is not applicable to cases of mere non disclosure, because mere non disclosure as dis-

of passing of title in goods bailed to third person—

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**CONTRACT ACT (1872), S 160**

*C J and Dumbley, J*) K J PATEL v T K V R V  
CHETTIAR 1940 Rang L E 361—  
AIR 1910 Rang 249

—Ss 160 and 148—Government promissory note deposited with Collector by company owning private bonded warehouse—Note not endorsed to company—Company's right to its return on cancellation of excise licence—Government if can plead interest of endorsee—Note attached by Government under S 88 (3) (c) Cr P Code—against endorsee—Effect See 1939 Dg Col 366 EZEKIEL PROVINCE OF BENGAL

185 I C 214=12 R C 350=41 Cr L J 131  
—S 170—Bailee's rights—Sale of cattle entrusted for grazing fees—If justified

Though according to S 170 Contract Act the bailee has a right to retain goods until he receives due remuneration for the services he has rendered in respect of them there is nothing in the section which enables him to sell the goods and recover his dues Hence a person entrusted with cattle for grazing cannot sell them for the recovery of the grazing charges due (*Puranik J*) VITHOBA v MAROTI

1910 N L J 412=AIR 1910 Rang 249  
—(as amended in 1932) Ss 1

179—Applicability and scope—Pledge wife's property without authority—Valid wife to recover pledged articles from pawnshop

The plaintiff brought a suit for recovery of certain articles or their value Rs 60 on the ground that they belonged to her (plaintiff) and that the first defendant got possession of the articles by stealth It was found that they had been pledged with the first defendant by the second defendant plaintiff's husband, but that the articles belonged to the plaintiff It was not shown that the second defendant had any authority from his wife the plaintiff to pledge the articles Nor was he a mercantile agent

Held that the first defendant recover the amount due on the on the ground that she was a pledge did not confer any right was therefore entitled to a decree (*Subramanyam Aiyar, J*)

MA  
—Ss 178 and 179—Relief

—First mortgagee's right to proceed against second mortgagee

Where there is a mortgage of the movable property remain in possession of the owner, and the property is sold, the first mortgagee had notice of the prior mortgage

**CONTRIBUTION.**

the agent is exempted from all liability, if his acts are the acts of a man of ordinary prudence and are performed at the time of an emergency The agents are ordinarily expected to carry out the instructions of their principals in all respects If, however, the goods are perishable or perishing, the agent is entitled to deviate from his instructions as to the time or price at which they are to be sold If the principal thereafter sues the agent for damages as a result of his selling the goods without the principal's instructions the agent is protected under S 189 of the Act (*Tek Chand and Abdul Rashid, JJ*) HARKISHAN SINGH v NATIONAL BANK OF INDIA LTD 42 P L R 393=AIR 1910 Lah 412

—S 196—Applicability—Contracts forbidden by law—Ratification—Conditions of validity—Delay—Effect See 1909 Dg Col 367 MADURA MUNICIPALITY v ALAGIRISAMI NAIDU 187 I C 780—12 R M 761

—S 200—Scope—If exhaustive—Ratification—Effect on third parties

The provisions of the Contract Act relating to agency are not meant to be exhaustive Neither S 200 of the

ratification does not relate back when persons other than the contracting party have acquired interests prior to ratification (*Venkataramana Rao and Abdul Rahman JJ*) THINNA PPA CHETTIAR v KRISHNA RAO

51 L W 453=(1910) 2 M L J 726  
—S 213—Construction—Accounts by agent to principal—If to be rendered at principal's place of business See C P CODE S 20 (a) AND (b)

1910 M W N 254  
—S 220—Construction and scope—Misconduct of

Power of Court See 1939 Dg Col, 368 RAMA NATHAN CHETTIAR v

100 I C 98=13 R M 137  
—S 220—Contribution—Two partners—Contribution from partnership—If KANNAYYA REDDI I C 62=12 R M 515

—S 220—Necessary party not impleaded—

## CONTRIBUTION

(*Dhale and Manohar Lall, JJ*) A. JAMES v ACHAI-  
BAR SINGH 185 I O 297=6 B.R. 150=  
12 R P 346=21 Pat L T. 416=  
A.I.R. 1940 Pat 119.

—Sust for—Plaintiff not being party to contract  
between defendants—Effect of

In a suit which is in essence a contribution suit, the  
consideration that the plaintiff was no party to the con-  
tract between the defendants is by no means conclusive  
of the matter (*Dhale and Manohar Lall, JJ*) A  
JAMES v ACHAI BAR SINGH 185 I O 297=  
6 B.R. 150=12 R P 346=21 P L T 416=  
A.I.R. 1940 Pat 119.

—Sust for—When maintain

The mere existence of a decree  
for a suit for contribution A person who has a  
right to contribution cannot claim it if  
charged that which he says ought to  
common burden (*Sukhtonaratn, J*  
HEERACHAND 1939 M

DIN

—S 42 (2) (b)—Member—Me.  
1939 Dig Col 369 ANJUMAN IM  
QARZA v IMAM DIN 411

—S 42 (2) (b), (5) and (6)—Award  
for after member is adjudicated insolvent  
Court to refuse execution—Provincial J  
S 44

A Court called upon to execute an award  
(2) (b) of the Co operative Societies Act  
liquidator cannot refuse to execute such  
the ground that the member against whom the award

of illegal  
ANJUMA

—S 43—R 22 (6)—If u  
violating rules and ignoring law of  
fiction of Civil Court

Rule 22 (6) of the Rules framed  
Co operative Societies Act is not  
Local Government But if the award  
dictation the civil Court can certainly  
Even if the arbitrator is validly app  
can still be a nullity if there is viol

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TIVE CREDIT SOCIETY, LTD v GOPAL CHANDRA  
MITRA I.L.R. (1940) 1 Cal 82=188 I O 213=  
12 R O 674=70 C L J 492=A.I.R. 1940 Cal 198  
[On appeal from 70 C L J 489]

## CO OWNERS.

—S 43 (2) (1)—'Dispute'—Meaning See 1919  
Dig, Col 370. CO OPERATIVE SOCIETY, DHING-  
RANWALI v MAHOMED DIN. 42 P.L.R. 273

—S 43 (2) (1)—Award based on arbitration—  
Validity—Proof that party was member of society—  
Necessity for—Loan taken by him from society—If  
prior membership

In order that an award based on an arbitration under  
the Co operative Societies Act may be valid and binding  
on a person it is incumbent on the Society to prove that  
he was a member of the Society at the time when the  
reference to arbitration was made Although ordinarily

ree against alleged representative of a past  
member—If can be passed—Power of Civil

or the rule Both the rule and sub-section give jurisdic

CHARAN

VE (H O) 419=1940 O.A. 681=  
A L J 588=A I R 1940 All 482  
P), R 137 (1)—Scope of—If

establish adverse possession in the absence of positive  
indications that the co owner in physical possession was  
setting up an adverse title to the knowledge of the other  
co owner Possession is never considered adverse if it

## CO OWNERS.

can be referred to a law of the State of Madras  
*Patanjali Sastri, J*  
 DHUNBHAI KAVASH  
 52 L. J. 111

—Alienation by  
 —Equities—Several

One of two co owners of joint property is competent by himself to maintain a suit for ejecting a trespasser without joining the other co-owner when the property has not been divided between one of the co owners is entitled without reference to the other  
*Iyer and Subrahmanya A*  
 RAJU v. MADHAVA RAO 18 Mys L.J. 490

—Suit for accounts—Maintainability  
 A co owner who has not been actually ousted from the

SHABID v. ABDUL HOQUE DOBHASH  
 ILR (1940) 1 Cal 110, 120 T.C. 610  
 13 K.C. 95

—Broadcast of performance of musical work—

in public at all. A broadcast *per se* is no representation of the work. If the broadcast is only by listeners in private it might establish that there is a public performance. But a broadcast to all and sundry listeners will include hotels and other places of entertainment or refreshment who, if not forbidden, will perform the piece to a number of members of the public, and such a performance will be a public performance within the

## CO SHAREERS.

COMMISSION

188 IC 237=6 BR 726  
 1940 OLR 383=13 EPC 9  
 AIR 1940 PC 111 (PC).

matter of copyright. As a rule a title does not involve literary composition and is not sufficiently substantial to justify a claim to protection. That statement does not not be on so character as to being copied that of a song the use for the film of a title of a song is too unsub

1 composition—Infringe  
 alike film adopting title  
 repeating in any form

its words

CO SHAREERS—Abadi—Sale of house by tenant to co-sharer—Nature of rights conveyed—Other co-sharers, if entitled to sue for joint possession. See 1939 Dig Col 372. DARSAN SINGH v. PRAG SINGH.  
 187 LC 39=12 R.A. 460=ALR 1940 ALR

## CO SHARERS

—Adverse possession—What will and what constitute—Possession of one—Nature of.

The possession of one co sharer is possession of half of all the co sharers in the absence of repudiation of title, and the fact that the non p co sharers were not in receipt of profits will not suffice to establish adverse possession as against them (Collier, J) HAIDER HUSSAIN v SUBDHAN KHAN 1940 A W R (H C) 387 = A I R 1940 All 428

—Adverse possession—When can arise

In order to establish adverse possession by one tenant in common against his co-tenants there must be exclusion or ouster and the possession subsequent to that exclusion or ouster must be for the statutory period. What is sufficient evidence of exclusion must depend upon the circumstances of each case. Mere non-participation in rents and profits would not necessarily of itself amount to an adverse possession but such non participation or non possession may in the circumstances of a particular case amount to an adverse possession. Regard

—Common land—Exclusive possession by one in defiance of the rights of others—Claims to compensation by

or without objection from the other co sharers is under

the other's rights the excluded co sharer would be entitled to compensation from the co-sharer in possession. It cannot however be held that the excluded co sharer would be entitled to compensation even if he ha

session cultivates the lands not through tenants but by his own *uratia*, the compensation should be awarded not on a rental basis but on the basis of the produce of the land in the years in suit (Harries, C J and Dhanu, J) RAJ RANJAN PRASAD SINHA v KHO BARI LAL 21 Pat L T 854

—Common property—Donka belonging to proprietors of two adjoining estates in common—Right of one to put up bund—Right of other to prevent putting up of same—Proof of damage—Necessity

of two both open as to obstruct water flowing through the donka, and interfere with the common enjoyment of the common property

## CO SHARERS

1940 M W N 311 = (1940) 1 M L J 699

—Compensation—Right to—Co sharer kept out of possession

A co sharer who has been kept out of possession by the other co sharers is entitled to maintain a suit for compensation against them (Dhanu, J) BAIJAN SINGH v KAMRATAN PRASAD 6 B E 365 = 186 I C 397 = 12 R P 493 = A I R 1940 Pat 384

—Co-sharing—Presumption as to—Absence of tenant

Where there is adequate proof as to a tenant's co sharing before he left the village then it may be presumed that the co sharing continued during the tenant's absence (Mehta, S M and Harper, J M) KUEER SINGH v BAIJNATH SINGH 1940 R D 183 = 1940 A W R (B E) 71 of—Circumstances—In

v INDRAJIT

—Co tenancy — Substitution—Duration—Usages

ist must be held An unregistered co tenants could at co-tenant nor " RAM AUTAR 1940 E D 384 = 1940 A W R (B E) 247

g—Loss of right—Adverse possession Neutral holding in or adverse possession on of e not and

ed father—All sons not proceedings—Shares in 1939 Dig Col 372 CHRAJ KUEER = A I R 1940 Oudh 65

—Exclusive possession—Basis of right—Change in the nature of possession—Right of co sharers to object to the change See 1939 Dig, Col 372 RADHEE LAL v KUNJ BEHARI LAL 15 Luck 61

—Exclusive possession of common land by one in defiance of rights of others—Compensation to excluded co-sharer—Right to interest on—Mesne profits—Distinction

It is almost impossible to make any distinction between mesne profits as defined in the C P Code, and the compensation awarded to a co sharer of common land who has been deliberately excluded from enjoyment of the land by another who cultivates it in defiance of the other's rights. Interest is payable on the compensation so payable from one co sharer to another and can be tightly awarded (Harries C J and Dhanu, J) RAJ

## CO SHARERS

RANJAN PRASAD SINHA KHOBARI LAL  
21 Pat L T 854

—Exclusive possession—When arises—Co sharer realising rent by sufferance of co sharer landholder—Rights of—Transferee from such co sharer—If can be ejected

The nature of exclusive possession which could entitle a co-sharer or his transferee to remain in possession until partition must be the possession in assertion of a

in possession till a  
(Thomas, C J and  
NAZIRUDDIN HASAN  
186 IC 14  
1940 A W R

1940 O A 174=1940 O W N 173=  
A I R 1940 Oudh 215

—Joint khewat—Sale of a share in—Vendee's rights

Where a co-sharer sold a half share out of his half share in a joint in certain plots sharers and does not apply to an It is not possible certain plots and severalty (H a DEI 1940 A W R (B R ) 121=1940 O A 11b

—Joint land—Dealing by one—If binds all or amounts to ouster—Co-sharers allowing one to remain in possession for some time—If lost right to claim partition—If amounts to ouster

A transaction which is assented to by some only of

The other co-sharers are not thereby ousted, and their remedy, if they object is merely to obtain partition. The mere fact therefore that some of the co-sharers have allowed others to remain in possession of the lands for some time will not amount to ouster nor can it defeat

suit—Other co-sharers suing for declaration of their rights—If need seek remedy against receiver

Hence the fact that a receiver was appointed in mortgage suit brought by the mortgagee

redeem is entirely irrelevant to such a suit and is not necessary for decision in suit. In such a suit the co-sharers need not ask for the further relief of partition

## CO SHARERS

(Mackay J) S L S K R CHETTYAR FIRM v FAROK AHMED 187 IC 460-12 RR 334= A I R 1940 Rang 83

—Rights inter se—Right of one to build on or let out for building purposes joint land—Absence of consent of others See 1939 Dig Col 374 AMJAD ALI KHAN v DISMILLAKHAN A I R 1940 Oudh 21

—Rights of—Grant of easement

Where a co sharer grants a lease with respect to the

grant (Sen, J) HARAN CHANDRA MUKHO PADHYA v SHYAMA CHARAN CHAKRAVARTY 190 IC 483= 13 B O 166=71 CLJ 248=A I R 1940 Cal 447.

—Right of one of many to eject

question such a co-sharer on the ground that he is in the khewat (M ) NARAIN DAS 1939 R D 640 (1)= 1940 A W R (B R ) 3

—Right of one co tenant to deal with property of another

A tenant in common cannot deal with the right of alienations, without that (Grille J) NANURAM 1940 N L J 268= A I R 1940 Nag 241

co sharers' rights

As a co sharer in undivided possession of any portion of an undivided holding not exceeding his own share, he cannot be disturbed in his possession until partition. Hence a co-sharer who is in such possession of any portion of a joint khata can transfer that portion subject to adjustment of the rights of the other co sharers

A I R 1940 Lah 473

—Right to alienate—Person in exclusive possession SINGH v Luck 15

sale of that

there is no presumption that a corresponding share in the house in that share is also sold (Hamilton J) BACHAN LAL v GOBARDHAN 15 Luck 288=

## CO SHARERS

12 R O 227=185 I C 373(1)=1940 O W N 13=  
1910 O A. 33=1940 E D. 13=A I E 1940 Ondh 118

—*Shamlat—Right of passage*

A co-sharer is entitled to a right of passage over the Shamlat land when it is not reserved for any common purpose of the village (*Bhidi J*) DULLE v KEHRI SINGH 42 P L R 142

—*Suit for profits—One of two co sharers ex-proprietary tenant—Other co sharer whole of ex proprietary rent in lieu of If can claim profits*

Where one of two co-sharers of a khesher in a suit for arrears of rent on the ex proprietary holding accepts the whole of the ex proprietary rent from the other co-sharer who is the ex proprietary tenant in lieu of his share of the profits he is estopped from subsequently claiming a share of profits in the remaining portion of the *sur land* (*Bennet and Verma JJ*) GHASIDOO MAL v ASA RAM

I L R (1940) A 8=187 I C 369=  
12 R A 530=1940 A W R (H C) 129=  
A I R. 1940 All 17

—*Suit for profits—Right—Excessive use and occupation*

Although one co owner is not accountable to the others for excessive use and occupation but if his possession or user of joint property is inconsistent with the title of the others or it amounts to their exclusion or dispossession such possession or user clearly becomes unlawful and he is bound to render account of the rents and profits of the share of others (*Tek Chand Abdul Rashid JJ*) PUNJAB NATIONAL BANK I SETH PARS RAM 190 I C 61 =

A I R 1940 Lah

## COSTS See also C P CODE S 35

—*Appeal—Summary dismissal by appellate Court*—*Attorney of deceased party—Right to apply to Court for order of payment*

An attorney of a deceased party is entitled to apply to the Court for an order for payment of the costs and expenses incurred by him in the course of the suit, although he is not a party to the suit (*McNair J*) SARBA SUNDARI DASI v NANDA RANI DASI

I L R (1940) 2 Cal 102.

—*Commissioners of Partition—Right to apply to Court for order for payment—Taxation of bills of Commissioner*

A Commissioner of Part the Court which appointed he was appointed for an order and expenses, although he His bills may be taxed by the tax collector of the Court (*McNair J*) SARBA SUNDARI DASI v NANDA RANI DASI I L R (1940) 2 Cal 102

—*Discretion—Defamation—Suit for damages—Decree for smaller amount than claimed Power of Court to award*

In cases of claims for damages for defamation it is not possible for the Court to assess the exact figure Parties cannot be expected to assess the damages in an exact manner Although the amount of damages decreed by the Court is very much less than the amount claimed the Court can award full costs to the plaintiff and not merely proportionate costs (*Pandurang Rao and Ashur Rahman JJ*) VENKAYYA

## COSTS

PANTALU v SURYA PRAKASAMMA

1940 M W N 892=52 L W 282=  
A I E 1910 Mad 879=(1940) 2 M L J 328

—*Discretion—Interference In appeal—Second appeal—High Court's power of interference See C P CODE, S 100 51 L W 538=(1940) 1 M L J 764*

—*Discretion—Mortgage suit—Purchaser of mortgaged house to pay with mortgagor to pay but failing to do so and acting him to pay costs of by appellate Court—Priority*

Wide powers of discretion are given to a Judge when considering the question of costs His discretion must be exercised judicially and must be in accordance with general principles of law Before a decision in regard to costs is reversed, it must be shown that the order has been made contrary to a proper exercise of discretion and general principles of law A purchaser of one item of mortgaged property which had been put up for sale undertook with the vendor to pay to the mortgagor the purchase price towards the mortgage but he did not keep his promise with the result that the mortgagor had to bring a suit to enforce the mortgage The purchaser was in occupation and was impleaded as a party to the suit as he was a necessary party The trial Court by its decree directed the purchaser to bear the costs of the suit personally since through his conduct the mortgagor was forced to take proceedings in the suit On appeal this order for costs was reversed on the ground that there was no privity of contract between the purchaser and

is the failure of the purchase and pay the suit and it acted improperly or contrary to general principles or exercised its discretion the order of the trial Court any rate one which in the was entitled to make the in reversing it and the

order of reversal should therefore be set aside (*Gentile J*) RAGHAVA CHARIAR v PONNUSWAMI MUDALI 51 L W 318=1940 M W N 504=  
A I E 1940 Mad 519=(1940) 1 M L J 388

—*Discretionary matter*

The grant of costs is discretionary and not obligatory (*Saif J*) MAHRANA v MAHARAJ NARAIN 1940 O W N 1152=1840 B D 549

—*Mistake of Court—Correction—Order for costs if justified*

A Court is not justified in awarding costs in a case

—*Pleader's fees—Declaratory suit—Lahore High Court Rules and Orders*

Under the Rules and Orders of the Lahore High Court the pleader's fee in a declaratory suit under O 21,

—*Court—Disentitling circumstance*

Where a party fails to produce the necessary evidence in the trial Court and succeeds in his suit on the production of such evidence in the appellate Court he is not entitled to costs as all the trouble was due to his own negligence (*Harbir S M and Saif J M*)

## COSTS

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## COURT FEES ACT (1870), S. 6.

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Taxation—Solicitor employed by client on salary

Right to costs as between party and party—Costs—If

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plaintiff being at the time entitled in law to institute such suit, but in the meantime the legislature takes, by

entitled to recover them by way of indemnity from the opposite party. In the absence of evidence to the con-

Khan, C.J.)  
NARAIN DASKAMLAJAI GHASIRAM V. DHUNABHAI  
188 IC 462.

COURT-FEE—Administration suit—Appeal—Court-fee payable. See COURT FEES ACT, S. 7 (iv) (f).

42 P.L.B. 101.

Mesne profits—Claim for—Tentative Va

—If to be given.

Where a plaint claimed mesne profits from a date till delivery of possession of property, but no fee was paid on that claim but a statement was

thing in a single judgment and adds a direction that the decree is to be drawn up after the deficiency is made good, the procedure adopted by the Court is in flagrant



## COURT FEES ACT (1870), S 7

for no decree

Ahmad and

TEJPAL 1

—S

that plaint

mature for payment

A suit to obtain a declaration that the plaintiff is the sole and exclusive owner of G P Notes which are not mature for payment is not a suit for recovery of money. As such S 7 (i) does not apply to such a suit. (*Tek Chand and Abdul Rashid, JJ*) NARINDAR SINGH v KULDIP SINGH 188 IC 461=

(v) an

ability—Suit for partition by minor Hindu co-owners—

## COURT FEES ACT (1870), S 7.

Ab

lat

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—(as amended by United Provinces Court Fees Amendment Act, 1937 (v) of 1937)

share at Rs 40,000 but paid a court fee of only Rs 100 under Art 17 B of Sch II of the Court Fees Act, as

BUX SINGH v. AMBIKA BUX SINGH

15 Luck 76=A I.R. 1940 Oudh 47.

—S 7 (iv) (b) and Sch II, Art. 17 (vi)—Suit by Mahomedan co-owner in joint possession for partition—Court fees. See 1939 Dig, Col 379 NISAR ALI KHAN v NAWAZISH ALI KHAN 186 IC 328=

12 E.L. 388.

locutory character

Per *Abdur Rahman, J*—(1) that as regards the other creditors impleaded the plaintiff could not be called upon to pay any additional court fee in respect of the transactions challenged, and it would be for the plaintiff to establish their right to the accounts when account was taken, (2) that accounts should be taken as equivalent to

—S 7 (iv) (c)—Applicability—Suit for declaration that debt conciliation agreement is without jurisdiction and not binding

—agreement entered into and declared invalid, is void or voidable and of the Specific Relief

## COURT FEES ACT (1870) S 7

Act under which the Court may adjudge the document void or voidable and order it to be delivered up and cancelled. In such a case the plaintiff must be deemed to have asked for the relief which the Court can grant under S 39 of the Specific Relief Act and this amounts to consequential relief and hence the suit would fall under S 7 (iv) (c).

situate in Hyderabad—Title of plaintiff in property—If to be gone into—Court fee payable—Valuation—Right of plaintiff—Plaintiff native of Hyderabad and claiming easement as appurtenant to property in Hyderabad—Law applicable—Jurisdiction of British Indian Court

The plaintiff claimed that irrigation works in his occupation situate within the Hyderabad State received

of easement

## COURT-FEES ACT (1870), S 7.

holder and that the defendant is in wrongful possession, the proper court fee is that prescribed by S 7 (v) of the Court Fees Act. The suit is one purely for possession and no declaration is required. It is not necessary that the plaintiff should also pay Court fee under S 7 (iv) (c) (*Agarwala J*) *BRIJ BEHARI PRASAD SINGH* 1940 O.A. 342 = 1940 O.L.R. 218 = 171 = A.I.R. 1940 Oudh 248

—Valuation

Plaintiff brought a suit for an injunction to restrain the defendant from making permanent constructions on the suit land and for a mandatory injunction for the removal of the construction already made, alleging that he was holding only an under rayati interest in the land. The suit was valued by the plaintiff under S 7 (iv) (d) of the Court-Fees Act at Rs 10 for purpose of court-fee. The court held that the suit was for a

depreciation in value of the suit land to the defen

or inadec-  
tion to  
e for in  
sh India  
appur-

A.I.R. 1940 Cal 552.

—(as amended in Madras) S 7 (iv) (c) and (v)—Applicability—Suit under S 13, Madras Survey and Boundaries Act, containing prayer for possession—Court fee payable. See 1939 Dig Col 380 SEVUGAN

ing to the law of British India (*Wadsworth, J*)  
VENKATA RANGA RAO BAHADUR v SITA RAMA  
CHANDRA RAO BAHADUR 52 L W 610 =  
1940 M.W.N. 1082 = (1910) 2 M.L.J. 655

—S 7 (iv) (c)—Applicability—Suit for injunction on  
against co trustee and for posses  
Joint trusteeship denied—Declara-  
ship found necessary for right to  
able. See 1939 Dig Col 380  
DESIKAR v GOPALA CHETTIAR

—S 7 (iv) (c) and (v)—Applicability—Suit for  
possession of share in village—Allegation that plaintiff  
is brother of last male holder and that defendant is in  
wrongful possession—Court fee payable—Declaration—  
Prayer for—If necessary

mediate remedy in accordance with the title which the  
Court has been asked to declare. A futile and demur-  
rable claim for injunction is excluded (*Skimp, J*)  
SHAM LAL v SHAHBAZ KHAN. 42 P.L.R. 364

to the passing of the U. P. Court Fees Amendment Act  
of 1938 to pay *ad valorem* court fee on the market value  
of the property, namely, a house which is the court fee  
payable in a suit for possession. (*Zia ul-Haque, J*)  
ORI LAL v MST RAHIM ZADI 15 Luck 531 =  
12 E.O. 381 = 187 L.O. 454 = 1940 O.W.N. 389 =  
1940 O.A. 342 = 1940 O.L.R. 218 =

171 = A.I.R. 1940 Oudh 248  
for declaration that com-  
p was obtained by fraud and  
relief. See 1931 D.J. Cal.  
AND INVESTMENT LTD v

185 L.C.  
12 E.C.

## COURT-FEES ACT (1870), S 7.

—S 7 (iv) (c) and (v)—*Suit ostensibly to establish title and confirm possession—Suit really to set aside portion of compromise decree and execution sale—Proper valuation*

to  
pro  
the  
for Rs 13,000 but that there was an understanding between them that his liability would be really for Rs

## COURT-FEES ACT (1870), S 7.

In an appeal from a decree in a suit for administration, the appellant is entitled to value his relief for purposes of court fee at such figure as he may fix. He is not bound to pay court fee on the *ad valorem* value of

GOVIND LALJI v MILAP

42 P L R 101

U P Agriculturists Relief

under Agriculturists Relief

Act, to declare amount payable—Nature of—Court fee payable.

money is due from the plaintiff to the defendant But

the assets the valuation should be based on the valuation

AYYANGAR

185 I C 459=12 B M 542

—S 7 (v)—*Applicability—Suit against mortgagor possession*

n a suit for possession against a mortgagor who had delivered possession of property mortgaged, an *ad valorem* court fee on the market value must be paid

as the defendants are allegedly in possession and as there is no special provisions in the Court Fees Act as regards suits of this kind (*Dames*) NAWAB KHAN v ALI SHAH 1940 A M L J 49

—(as amended in Madras), S 7 (v) and possession

committee

of pro-

Munsif's

A. UPPANNA

NADAR v KARUPPA NADAR

189 I C 289=

13 B M, 234.

—S 7 (v) (a)—*Valuation of subject matter—*

—Ss 7 (iv) (d) and 8 C—*Suit for permanent injunction—Prayer restraining execution of decree against property in plaintiff's possession—Proper valuation*

In a suit for a permanent injunction restraining the

tion In a case of this sort the objective standard of valuation must be taken to be represented by the extent to which the plaintiff will be benefited if he succeeds in his suit. It would be necessary enquiry under S 8 C. of the the value to the plaintiff

—S 7 (iv) (f)—*Admin Court fee payable*

garden as the case may be in the year immediately

## COURT-FEES ACT (1870), S 7

preceding the presentation of the plaint and (2) its market value. If the net profits are not readily ascertain-

—S 7 (v) (c)—Construction—Profits in the nature of windfall—If to be excluded for purposes of court-fee

S 7 (v) (c) of the Court-Fees Act does not give the Court any option to consider whether or not the profits for the year preceding the presentation of the plaint are exceptional or unusual. Such profits are to be excluded from the court-fee on the ground of windfall. (11) HUSSAIN v K

## A I R

—S 7 (xi) (cc)—Applicability—Suit against former tenant who set up a title in himself. See 1938 D.C. Col 431 AHAMADALI FAKRUDDIN v MULLA FIDA ALI I L R (1940) Nag 391

—S 8-B (3) and (c)—Additional court fee found due on enquiry not paid—Proper order—C P Code, O 7, R 11

If the plaintiff fails to pay the additional court fee found payable on an enquiry made under S 8 (c) of the Court-Fees Act, the proper order for the Court to make will be an order for dismissal under the provisions of S 8 B (3) of that Act as amended in Bengal by Act VII of 1935, and not an order rejecting the plaint under the provisions of O 7, R 11 C P Code (Mitter and Roxburgh, JJ) JA SECRETARY OF STATE I L R

44 C W N 745 = 1

—S 8 (c)—Applicability—Case falling within S 7 (iv) (c)

S 8 (c) of the falling within S

## COURT-FEES ACT (1870), S 13.

—S 12—Scope—Valuation for purposes of jurisdiction—Finding by trial Court—Appellate Court, if can go into

S 12 of the Court Fees Act makes the valuation for

44 C W N 391

—S 12 (1)—Finding of Court as to net profits or market value under S 7 (v) (a)—Finality—Extent

S 12 (1) of the Court Fees Act does not give the Court any option to consider whether or not the profits for the year preceding the presentation of the plaint are exceptional or unusual. Such profits are to be excluded from the court-fee on the ground of windfall. (11) HUSSAIN v K

I L R (1940) 2 Cal 460 = 190 I C 263 = 13 R C 137 = 44 C W N 822 = A I R 1940 Cal 438.

—S 12 (1)—Valuation for court fee by the trial Court—If can be challenged

The valuation made by the Court of first instance for the purpose of assessing court fee is final and cannot be challenged in appeal, when there is no question as to the class in which the suit falls and the question is merely of valuation in that class (Mitter and Roxburgh JJ) JARIMON KHATOON v SECRETARY OF STATE I L R (1940) 2 Cal 166 =

44 C W N 745 = A I R 1940 Cal 451.

—S 12 (2)—Applicability—If confined to appeal by plaintiff only

deemed to include an appeal. The actual wording of

able valuation of the relief claimed and it follows that it will be for the Court to decide on the merits of each

—S 12 (II)—Scope—Decree signed and sealed—Power to require payment of additional court fee—

KINATRAI v. —12 E.S. 163. exhaustive—In-fee See 19

## COURT-FEES ACT (1870), S 13

Dig, Col 386 VISHNU NAR  
MARAR

—S 13 Proviso—Reman  
whole of subject matter—Refunc  
—Legality.

Where an order of remand does not cover the whole of the subject matter of the suit an order directing

## —S. 17 and Sch I Art 1—

action against the same defendant or the same defendants jointly and to appeals arising out of those suits But it cannot apply to a case of a claim made by a

requires only a single written statement to be filed by a creditor in respect of his claim which may consist of claims upon several documents Hence it cannot be treated as a suit in which several can be  
been unite  
and an ap  
subject ma  
of the cla  
Art 1, au  
(Thomas,  
WATI DEV

—S—  
mortgage  
distinct reliefs

A plaintiff suing for redemption of a mortgage and asking for reliefs, within the value which covers the relief in regard to surplus profits as well as the interest  
Rahman,  
BERG

—S—  
Appellant tied to believe that appeal  
entirely stamped—Dismissal of appeal

## COURT FEES ACT (1870), Sch I, Art 1.

11) RIDHA KARAN  
1940 A.M.L.J 19.  
Scope—Imposition of  
MARIAM BIBI v C.  
C 623=12 E.R. 210

—Sch I, Art 1—Appeal in mortgage suit—Suit decreed overruling defendant's contention as to plaintiff's liability to account—Appeal by defendant—Proper valuation

In a suit brought on a mortgage, the Court passed a decree in favour of the plaintiff overruling the contention of the defendant that the plaintiff was not entitled to

Held, that the appeal should be valued according to the amount of the decree of the trial court and that the court fee should be paid upon that amount (Akram,  
HIRAN MOYEE

44 C.W.N 482  
1—Applicability—Appeal against  
made under S 9 of the United  
Estates Act See COURT FEES  
ACT, S 1 AND SCH I, ART 1—APPLICABILITY OF  
1940 O.L.E 92

—Sch I, Art 1—Applicability—Set off—

1940 Rang L.R. 529—A.I.R. 1940 Rang 300

as trustee—Court fee—Payable  
executants of three promissory  
were instituted Two of the notes

**COURT-FEES ACT (1870), Sch I, Art 1**

and it could not therefore be said that the subject-matter of the appeals was incapable of valuation so as to permit court fee being paid under Art 17-B of Sch II of the Court Fees Act as amended in Madras

Amount See

ACT, SCH I,

—Sch

Meaning of—

MARIAM BIBI v C. L. MIAH

—Sch I Art 1—*Suit for possession*

*possession subject to payment of sum of*

*tion precedent—Appeal against order*

*Court-fees*

A plaintiff appellant who seeks to get rid of an order for payment of a sum of money should value his appeal at the amount of that sum of money. In a suit for

**COURT-FEES ACT (1870), Sch II, Art 17.**

1940 O.A. 163—185 I.C. 895—  
1940 A.W.R. (C.C.) 85—A.I.R. 1940 Oudh 182  
—Sch II, Art 1 (d)—Same judgment governing  
several suits—Appeals filed in some to High Court and

in Bombay) Sch II, Art 6—

by guardian of minors estate

Wards Act—Stamp duty See

42 Bom L.R. 668

—Sch II, Art 11—*Applicability—Appeal against*

der

alls

ind

san

and York, J.J.) RAMESHWAR BAKSH SINGH v

GOVIND PRASAD 190 I.C. 814—1940 O.L.R. 633—

1940 A.W.R. (C.C.) 412—1940 O.W.N. 862—

1940 A.W.R. 295—1940 R.D. 416

ees (Amend

applicability—

—Individual

table—Any.

n certificate

aggregating

of debt or

subject matter in dispute in appeal

The words "value of the subject matter in dispute" in Art 1 Sch I of the Court Fees Act refer, in the case of

CHAMPALAL.

21 Pat L.T. 1019

—Sch II, Art. 17 (1)—*Suit for cancellation of*

*W. of N. of suit for purposes*

*under Sec 41, S. 34*

a certificate which was

under S 6 of the Public

within Art 17, Cl 1 of

**COURT-FEES ACT (1870), Sch. II, Art 17.**

**Court** The valuation of the suit for purposes of jurisdiction is the amount mentioned in the certificate

**Per *Rau, J.***—The very fact that S 34 of the Act provides for the cancellation or modification of the certificate by the Civil Court, subject doubtless to certain limitations is an indication that the certificate even in the form in which it ultimately emerges from the Revenue Court, is regarded as embodying no more than a summary decision liable to be set aside or modified upon a regular suit (*Nasim Ali and Rau JJ*) **JOY DURGA DAS v MAHARAJ KUMAR SOURISH CHANDRA ROY**

188 I C 402 = 12 R C 672 = 71 C L J 203 =

44 C W N 255 = A I R 1940 Cal 215

—Sch II Art 17 (iii)—Applicability—Suit to declare decree void *See* COURT-FEES ACT, SCH I, ART 1 AND SCH II ART

—Sch II Art 17

against manner of execution—*Court fee*

Where an appeal relates only the manner in which the

—Sch II  
under S 45 U  
tion as to amou  
posed

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the amount of t

—Sch II Art 17 (vi)—Applicability—Partition suit—Appeal against rejection of defence of paramount possession in lieu of dower

**Court Fees Act (Braund J) MUNIRAN v MUKHTAR BEGAM**  
1940 A W R (H C) 536 =  
1940 O A 970 = 1940 A L J 789 =  
A I R 1940 All 801

(as  
(1)—Appli  
parcener—  
fee payable *See* COURT FEES ACT (AS AMENDED IN  
MADRAS), S 7 (12) (a) AND (b) (v) AND SCH II,  
ARTS 17 A (1) AND 17 B (1940) 1 M L J 32 (F B)

**CR P. CODE (1898), S 1**

—(as amended in Madras), Sch II, Art 17 A  
—Suit for declaration filed in District Munsif's Court  
—Transfer to Subordinate Judge's Court for trial—  
Decree by Sub Court—Appeal—Court fee payable—  
Decree—If decree of Munsif's Court

Where a suit for a declaration without consequential relief is instituted in the first instance in a District Munsif's Court, but it is later transferred to a Subordinate Judge's Court for trial by that Court, along with another suit in that Court, and disposed of there, an appeal against the decree passed in such suit must be stamped with a court fee stamp of Rs 100 and not Rs 15. The decree appealed against is a decree of a sub Court, the fact that the suit was originally filed in the Court of the District Munsif cannot make it a decree of the Court of the District Munsif court fee under Art 17 A Act (*Leach, C J*) and

**FINAL PROCEDURE CODE (V OF 1898)**  
and 83—British India—Quetta—Warrant  
by Court in Quetta—Executability in British

Quetta is not a part of British India and a warrant issued by a Court in Quetta cannot therefore, be executed in British India. The Court in Baluchistan must

provisions of the Extradition Act

DEVKI NANDAN v EMPEROR

190 I C 203 = 13 B Pesh 21 =

Cr L J 857 = A I R 1940 Pesh 30

'Specific provision'—Meaning

(1) What the words 'specific provision' of the Cr P Code really mean  
provision of the Cr P Code to 'affect' the 'Special Law', in itself and not merely to be drawn from the statute the 'special law' in question is to be affected without necessarily referring to that 'special law' or the effect on it intended to be produced in express terms, While requiring something less

**Braund, J J BALDEO v EMPEROR**  
I L R (1940) All 396 = 188 I C 562 = 13 F A 48 =  
1940 A Cr C 57 = 41 Cr L J 627 =

## CR. P CODE (1898), S 4

1940 A L J 241=1940 A W R (H O) 229=

A I R 1940 All 263 (F B).

—S 4 (1) (h)—“Complaint”—What amounts to

A document addressed to the Magistrate ending with a prayer that the Magistrate deal with it is a complaint term contained in S 4 Cr P Code to be a complaint and merely because it also contains a prayer that it should be investigated by the Magistrate on the ground that the local police are

—S 4 (1) (i)—Investigation—If confined to proceeding under Code

Per *Khundkar, J*—A proceeding by a police officer for the collection of evidence would answer the definition of investigation only if

A I R 1940 Cal 97

—S 10—District Magistrate invested with powers under—Position of

Merely because the District Magistrate has been invested with certain powers under S 10 it does not follow that he has not other powers which are not contemplated by the Cr P Code. He is in addition the Collector of the District. He is also the District Officer and in those capacities he has to perform many functions which are not covered by the Cr P Code.

and *Khundkar, J* ) BEJOY KRISHNA  
SHYAM VARMA I L R (1939) 2 Cal 532=  
187 I C. 310=12 R C 575=  
41 Cr L J 442=A I R 1940 Cal 30

—Ss 32 and 33—Limit as to substantive sentence—If affects power to pass sentence of imprisonment in default of payment of fine

It is deductible from the provisions of Ss 32 and 33 Cr P Code that where a Magistrate has power to pass a sentence of imprisonment as well as of fine the limit placed on the term of the substantive imprisonment does not affect his power to pass a sentence of fine.

and

default of fines—If can be concurrent See CR P CODE, Ss 397 AND 35 I L R. (1940) Lah 143

—S 37—Scope—Non compliance with S 514—Order forfeiting bail bond—Omission to call upon sureties to show cause—Defect—If curable See C K. P CODE S 514 125 I C 599=6 B E 221

Y. D. 1940-28

## CR P CODE (1898), S 75

—S 54—Village chaukidar—If police officer—Powers of arrest—Arrest of person by chaukidar on mere oral direction of police Sub-Inspector—Legality—

therefore rescues the arrested person from the custody of the *chaukidar* he cannot be convicted for an offence under S 225, I P Code which constitutes a special offence and which cannot be committed unless the custody is lawful. Although the *chaukidar* might act in good faith that would not prevent his act in arresting

—Ss 56 and 54—Legality of arrest

An arrest cannot be legally made under S 56, Cr P Code, if the provisions of that section are not complied (i.e.) if the officer making the arrest does not notify the substance of the order. Nor can there be a legal arrest under S 54, Cr P Code, if the officer making the arrest has no information or suspicion that the person to be arrested is concerned in a cognizable offence. (Henn-

144=  
321  
includes  
offence under S 171 D, I P Code See 1939 Dig. Col 391 EMPEROR v BRAHMANAND MISRA  
41 Cr L J 85=I L R (1939) All 921.

—Ss 75 to 86—Duty of Court—Arrest of persons residing outside local limits of jurisdiction of Court issuing warrant—When to be directed—Duty of Court to satisfy itself that the persons to be arrested have committed offence

The power of directing the arrest of some person at a particular place is a power which is not removed from the Court by the fact that persons in one form or another are in custody all the way to a district. It is justified if the Court issuing the warrant has the material reason to believe that those persons have committed the offence complained of. (Henn- and *Wassandere J*) SACAPMAL 42 Bom L R 901=

A I R 1940 Bom 337

—Ss 75 and 86—Scope and effect—Procedure for arrest of person outside the local limits of Court issuing warrant—Arrested person brought before Magistrate—Inquiry by latter under S 180—Contingency—Duty Magistrate—S 186, if exceeds Ss 75 to 86.



**CR P. CODE (1898), S. 75.**

Under Ss. 75 to 86, Cr. P. Code, which deal with the issue of warrants to be executed outside the local limits

he is bound to direct the removal of the arrested person in custody to the Court which issued the warrant. The Magistrate in such a case is not entitled to institute an enquiry under S. 186, Cr. P. Code, which deals with a different matter. That section deals with a case in which the Court which has jurisdiction has cognizance of the matter, and the offence is the notice of a Magistrate who is not competent in which case he may send it to a Magistrate competent. S. 186 does not override the Ss. 75 to 86 which deal with the execution. The only point which the Magistrate is to inquire into under Ss. 75 to 86 is the question whether the arrested person is the person intended by the Court issuing

*C. J. and Wasonwood, J.*  
42 Bom L.R.

**—S. 75—Warrant—Contents**

vision for admitting the accused to bail. If the person to whom the warrant is addressed is a Magistrate or police officer, he may endorse it to some one serving under him. (*Bennet, J.*) JAGADISH NARAIN BAIJAI v. EMPEROR.

187 I.C. 682 = 12 E.A. 675 =  
1940 A Cr. C. 18 = 41 Cr. L. J. 600 =  
1940 A W. R. (H.C.) 79 = 1940 A L. J. 1;  
A.I.R. 1940 Al

**—S. 75—Warrant under —Execution**

*British India.*

**—S. 75 (2)—Cancellation of order—Necessity.**

—Ss. 77 and 83—Relative scope—Latter if overrides former.

S. 83, Cr. P. Code, which provides that in the case of a warrant to be executed outside the local limits of the Court issuing the same such Court may, instead of

**CR P. CODE (1898), S. 82.**

directing such warrant to a police officer, forward the same by post or otherwise to any Magistrate or District

KHEMRAJ, *In re.*  
A.I.R. 1940 Bom 397.  
Warrants—Form and contents of—Warrant not addressed to any definite officer and not containing address, description and occupation of person to be arrested—Validity of.

A robbery was committed in Calcutta of four currency notes of the denomination of Rs. 1,000 each. One of the notes was being carried by two persons

referred to the two merchants merely by their names and the name of the Magistrate was a note initialled "utta to the Magistrate, torn". The warrants only contained the surname and preceding name of the two merchants without any reference to the persons to be

bad and invalid, in that they were not sufficiently definite either in the name of the person to whom the warrant was addressed or in the description of the persons to be arrested. (*Braumont, C. J. and Wasonwood, J.*) SAGARMAL KHEMRAJ, *In re*

42 Bom L.R. 904 =  
A.I.R. 1940 Bom 397

the person to whom the warrant was addressed or showed him AN  
10.  
the  
of

for the arrest of a person in British India, should be

## CR. P. CODE (1898), S. 83.

Baluchistan Agency Territories, it must be read as if all references to British India in the Code of Criminal Procedure were references to British Baluchistan and the Baluchistan Agency Territories (*Lobo, J. C. and O'*

—S 94—Discretion of Court—Limits to exercise of—If controlled by S. 162, Cr. P. Code—Interference in remission with order for production of documents.

It is clear that under S 94, Cr. P. Code, the Court has an absolute discretion to require the production of any document which it considers necessary or desirable

bear in mind that under S. 125, Evidence Act, a police officer cannot be compelled to say whence he got any information as to the commission of any offence. Though

—S 94 (3)—Scope—Documents protected by Evidence Act, S 126—If exempted from production—Objection to production—When to be decided—Proce

—S. 96—Issue of warrant—Duty of Magistrate.

S. 96, Cr. P. Code, empowers only a Court to issue a search-warrant. A Magistrate is therefore acting as a Court when he issues a warrant and, before he does so, he should apply his judicial mind to the question whether there are sufficient grounds before him for the issue of the warrant. A search-warrant automatically without bare statement containing a statement that a search is necessary. The Magistrate must see whether there are sufficient materials before him to justify the drastic action which he is being invited to take (*Khundkar and Sen, JJ.*) K. HOSHIDE v. EMPEROR.

## CR. P. CODE (1898), S 106

I.L.R. (1940) 1 Cal 231=186 I.C. 486=12 R.C. 510=41 Cr.L.J. 329=44 C.W.N. 82=A.I.R. 1940 Cal. 97.

—S. 96 (1), third clause—Order for seizure by inspection by prosecutor—Power of make.  
—*Khundkar, J.*—A Court acting under cl. 96 (1), Cr. P. Code, can make an order to be followed by an inspection by the prosecutor where the Court judicially concludes that seizure and inspection will serve the purpose of any inquiry, trial or other proceeding under the Code. (*Khundkar and Sen, JJ.*) K. HOSHIDE v. EMPEROR.

I.L.R. (1940) 1 Cal 231=186 I.C. 486=12 R.C. 510=41 Cr.L.J. 329=44 C.W.N. 82=A.I.R. 1940 Cal. 97.  
—S 96 (1), third clause—Warrant for seizure by Magistrate

Code, when in some cases for the purpose of other things does not, therefore, empower a Magistrate to issue a search-warrant to help an investigation by the police or by the Customs authorities under the Sea Customs Act. (*Khundkar and Sen, JJ.*) K. HOSHIDE v. EMPEROR.

I.L.R. (1940) 1 Cal 231=186 I.C. 486=12 R.C. 510=41 Cr.L.J. 329=44 C.W.N. 82=A.I.R. 1940 Cal. 97.

—S 103—Non compliance with provisions—Evidence of search witnesses—Admissibility. *See* 1939 Dig. Col. 392. BONOMALI BHATTACHARJIA v. EMPEROR. 186 I.C. 471=12 R.C. 499=41 Cr.L.J. 316=A.I.R. 1940 Cal. 85.  
—Conviction under S. 149—Separate Jig. Col. 392. MEHRAJ 41 Cr.L.J. 17 (1).  
—Person convicted under S. 106 against him under

Code, is not an offence and a person convicted under S. 106, Cr. P. Code, is not therefore ordered to be kept in custody under S. 106, Cr. P. Code. VENKATAPPA v. EM 1940 M.W.N. 531 (1)=L.L.N. 100 (1)=A.I.R. 1940 Mad 755.

—S. 106—Offences involving breach of peace—Meaning of—A case convicted under S. 254, Penal Code—If can be bound over.

The expression 'offences involving a breach of the peace' means offences in which the commission of a breach of the peace is a necessary ingredient or offence the commission of which has actually led to a breach of the peace (irrespective of the party by which that breach was caused). It is not the case that the words 'breach of the peace' have not only a popular usage but in law the significance of a disturbance of the peace by something more than a

## CR P CODE (1898) S 106

abusive or obscene words, that is to say by report, if not to actual violence to threats of it. In other words the word "peace" is used as a synonym for security rather than for tranquillity. Hence where an accused person is convicted of an offence under S 294 Penal Code an order under S 106 Cr P Code cannot be made unless there is a finding that active criminal intimidation or assault etc. have actually occurred in consequence of the obscene abuse. (*Mostly*) THE KING v MAHARAJA K. V. N. V. 1010 Rang L.R. 256=187 I.C. 149=12 R.R. 320=41 Cr L.J. 421=A.I.R. 1910 Rang 50

—S 106—Order under—When could be passed—Conviction under Ss 323 and 342 I P Code—Appeal—Conviction on S 342 alone maintained—Order under S 106 Cr P Code if proper

In passing an order under S 106 Cr P Code, it has to be seen not whether the persons concerned did commit a breach of the peace but whether they were convicted of an offence which necessarily involves a breach of the peace. If the offence is one in which a breach of the peace may have been committed in the circumstances of the particular case but which in other circumstances does not necessarily involve a breach of the peace an order under S 106 Cr P Code cannot be passed. Where certain persons were convicted under Ss 323 and 342 I P Code, but in appeal the conviction under S 323 was set aside and that under S 342 alone was maintained in such case an order under S 106 Cr P Code cannot be passed. (*Hamilton*) J. AKHTAR HUSAIN v EMPEROR 187 I.C. 808=12 R.O. 417=41 Cr L.J. 505=1940 A.C. 73=1940 O.A. 380=1940 O.L.R. 218=1940 O.W.N. 423=1940 A.W.R. (C.C.) 248=A.I.R. 1940 Oudh 323

—S 106—Scope—Conviction under S 426 I P Code—Order under S 106 Cr P Code—Sustainability See 1939 Dig. Col. 393 SUBHA KAO, *Infra*

185 I.C. 763=12 R.M. 593=41 Cr L.J. 335=A.I.R. 1940 Mad. 55

—S 107—Action against leader for apprehended acts of his community—Properly See 1939 Dig. Col. 393 MAHMOUD ABDUL QAYUM v EMPEROR

I.L.R. (1929) Lah. 551

—Ss 107 145 and 537—Complaints under Ss 107 and 145—Locality of procedure adopted—Interference by appellate Court—Curability under S 537

The object of both Ss 107 and 145 Cr P Code is to prevent civil riots and commotions. Where two complaints are made under Ss 107 and 145, and a Magistrate adopts a particular procedure, the appellate Court should as far as possible abstain from binding the hands of the Magistrate too tightly. It is partially with this object that S 537 is enacted. If no injustice has resulted and if the breach of peace has been avoided then the first object of the two sections has been fulfilled and no interference is called for, and the irregularity if any can be condoned under S 537. (*Davis*) ZORA v JAWAHIR NATH 1940 A.M.L.J. 58

—S 107—Proceedings under—Nature of See 1939 Dig. Col. 394 OM RADHE v EMPEROR

I.L.R. (1940) Kar. 113

—S 107—Scope and object of—Order for security—Conditions for—Burden of proof—Dispute as to immovable property—Continuance of likelihood of breach of the peace up to date of order—If to be proved—Amount of security

It cannot be laid down as a hard and fast rule that in order to support an order for security under S 107 Cr P Code, it is incumbent on the Crown to show not only that there was likelihood of a breach of the peace

## CR P CODE (1898) S 109

at some past time, but that this likelihood continued to the date of the order for security. In the case of a claim to immovable property where there is no religious dispute and there is no indication that the accused party are likely to abandon their claims or to give up the intention of using violence in support of them, no such duty is cast on the Crown. The intention of the section in a case of this kind is preventive and not penal and the security demanded should not therefore be excessive or unnecessarily high. (*Kanlat*) J. MAHABIR GOPE v SAMBATHI SINGH 189 I.C. 457=41 Cr L.J. 746=12 R.P. 124=6 B.R. 837=21 Pat. L.T. 652=1940 P.W.N. 52=A.I.R. 1940 Pat. 252

—S 107 (1)—Construction—Notice under—Contents of—Substance of information See 1939 Dig. Col. 394 MUTHUSWAMI CHETTIAR, *Infra*

I.L.R. (1940) Mad. 335=12 R.M. 584=41 Cr L.J. 238=185 I.O. 821=A.I.R. 1940 Mad. 23=(1940) 1 M.L.J. 11 (P.B.)

—S 108 and Penal Code, S 153 A—Isolated sedition or objectionable speech—Under what provision of law to be proceeded against

A person who makes an isolated sedition speech, or who is found on a stray occasion only circulating notices which may have the effect of promoting enmity between classes may possibly be prosecuted under S 153 A of the I.P. Code but he cannot be proceeded against under S 108 Cr P Code. (*Thomas C. J. and Ghulam Hasan, J.*) EMPEROR v SWAMI SARUPANAND 180 I.C. 805=1940 A.C. 147=1940 O.L.R. 640=1940 A.W.R. (C.C.) 441=1940 O.W.N. 1018=1940 O.A. 938

—S 108 (b) and Evidence Act (1872) S 14—Proceedings under S 108 (b) Cr P Code, to prevent delivery of objectionable speeches—Previous speeches of same party—Admissibility

Where proceedings under S 108 (b), Cr P Code, are started against a person in order to prevent him from delivering speeches likely to create communal tension in the inquiry speeches delivered by the same person on prior occasions are admissible in evidence under S 14 of the Evidence Act. They serve to show the existence of a particular state of mind or intention. Ill. (c) to the section is very similar to the facts of the case. (*Niyogi J.*) JAGANNATH PRASAD VERMA v EMPEROR 189 I.C. 74=41 Cr L.J. 713=12 R.N. 35=1940 N.L.J. 31=A.I.R. 1940 Nag. 134

—S 109—Applicability—Absence of evidence to prove existence of circumstances justifying action—Effect—Statement to dafadar after arrest amounting to confession—Admissibility—Evidence Act S 26

It is not possible to lay down general principles for the application of S 109 (a) and (b) Cr P Code. A dafadar, on patrol duty found at midnight the petitioner walking on a path which was apparently used as a thoroughfare. Petitioner on being questioned by the dafadar replied that he was going to a marriage party and that he had others accompanying him. These other persons came on the scene later and the dafadar took all the four to the police station and made a report. Besides stating to the Sub-Inspector that he had met the petitioner and others the dafadar added also that the petitioner had subsequently stated to him that he had been asked by one R to commit theft and that it was for this reason that he and his companions had come to the place where they were discovered by the dafadar. Proceedings were taken against the petitioner and others under S 109, Cr P Code and the petitioner examined several witnesses in support of his case.

Held, (1) that the statement of the dafadar that the petitioner told him of his having been asked by R to

CR P CODE (1898), S 110

commit theft was clearly inadmissible under S 26 of the Evidence Act as it was made after his arrest, (2) that the petitioner had given an account of himself which was not shown to be false or in any way unsatisfactory, and (3) that therefore neither Cl (a) nor Cl (b) of S 109 Cr P Code applied to the case and the order requiring the petitioner to furnish security could not be sustained (*Fazl Ali and Meredith JJ*)

grammatically read as referring to the place where the acts on which an order is to be based were committed it refers merely to the place where he was when the information was received. A person can be said to be

When the within the was receive temporary diction to f Sen J)

—S 110—Evidence of general reputation—Admissibility—If affects S 50, Evidence Act See BUDDHIST LAW (BURNESE)—MARRIAGE

A I R 1940 Rang 181

—S 110—Person proceeded under—If prosecuted for offence See CR P. CODE, S 4C

—S 110 (e)—‘Habitually’—If practice

Intimate to the party the general nature of the case against him to give him an idea as to what the witnesses would testify against him. It need not contain more than an indication of the particular offence which is

CR P CODE (1898), S 139-A

sought to be prevented (*Niyogi, J*) JAGANNATH PRASAD VERMA v EMPEROR 189 IC 71= 41 Cr LJ 713=13 EN 39= 1940 N L J 31=A I R 1940 Nag 134

—S 117—Applicability and scope—Attempt to abet or abetment of forgery—Order—Order under section—Legality

An order under S 117 is in the nature of an interim order and must be of a kind which could be made in a permanent order in the proceedings. The temporary order must be capable of direct relation to the application under Ss 107, 108, 109 and 110 on which the pro-

J C and Weston, J) EMPEROR v. SUMAR

I L R (1940) Kar 494=190 IC 532= 41 Cr LJ 937=A I R 1940 Sind 175

—Ss 123 (6) and 108—Rigorous imprisonment for failure to give security in proceedings under S 108—Legality

Under the provisions of S 123 (6) Cr P Code, a sentence of rigorous imprisonment for failure to give or where the proceedings are Code is illegal. The imprisonment (*Thomas, C J and Ghulam*)

Justified—1939 Dig CHANDR.

—S 139—Scope—Power of Court—Juror express report—

dict by a

claim ousting the jurisdiction of the Criminal Court to pass a summary order under S 133, Cr P Code, against him. Where the person clearly denies the public right alleged, and there is evidence in

## CR. P. CODE (1898), S. 139 A.

of the denial, the Magistrate must refer the parties to a Civil Court under S. 139-A. If the Ma

## CR. P. CODE (1898), S. 144.

It is only when there is a dispute likely to cause a

ding

latory

under S. 144,  
(Dhavl, J.)

W.N. 461=

Cr L.J. 417=6 B.R. 428=A.I.R. 1940 Pat 492.

—Ss 144 and 145—Applicability—Bona fide

at all to ascertaining whether support of the denial of the exi and takes upon himself to deci a public right exists or not usa Court and deprives the party have the matter decided by passed in such circumstances is illegal and must be aside. (Agarwala, J) MUNI LAL AGARWALA PUBLIC OF BHAGALPUR 190 I.C. 878

7 B.R. 36=1940 P.W.N. 774=21 Pat L.T. 8

—S. 139 A—Scope—Non-compliance—Effect proceedings

The provisions of S. 139-A, Cr. P. Code, are clearly designed to ensure that where there is reliable evidence in support of the denial of the existence of the public right, the Magistrate shall have no jurisdiction to pronounce on the cogency of the evidence, but must refer the matter to the Civil Court. When the Magistrate fails to observe the provision upon himself to decide the right exists or not, he usurps Court and his order, being set aside. (Dhavl, J.)

NONIA 1940 P.W.

—S. 141—Applicability—Jury defectively constituted or exceeding its functions.

S. 141, Cr. P. Code, has nothing to do with defectively constituted or with a jury which exceeds functions in material respects (Dhavl, J.)

SARAN SINGH v. KAMLA PATI LAL.

21 Pat L.T. 793=A.I.R. 1940 Pat. 717.

—S. 141—Discretion and duty of Magistrate—Order—Form and substance of—Jury failing to function

—Procedure—Fresh opportunity to persons

against—If to be given See 1939 Dig.

JETHANAND v. SHIKARPUR MUNICIPALITY

186 I.C. 723=41 Cr L.J. 364=12 B.

A.I.R. 1940

tions. S. 143 does not apply to original proceedings but applies only to subsequent proceedings where a decision has been made the subject of the proceedings under the sections which follow that S. 143 does not apply to proceedings supplementary to and incidental to the proceedings under S. 144 the

KUMBAR.

13 B.R. 2=

—Ss

scope—Abuse

of power—Existence of imminent danger of breach of the peace—Procedure

trial.

—S. 144,

Justitia.

S. 107

—S. 107

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I.L.R. (1940) Kar 508=190 I.C. 618=41 Cr L.J. 952=A.I.R. 1940 Sind 158.

## CR P CODE (1898), S 144

—S 144—Applicability if can be invoked to enable one party to obtain advantage over other

It is true that S 144 gives wide powers to the Magistrate and that imminent danger to the public peace justifies the subordination of private interests. At the same time care should be taken to see that the section is not invoked by one party to a case to obtain material advantage over the other.

*C and Weston v Viru KAMU v DEWANDAS JHAMANDAS*  
 I.L.R. (1940) Kar 502=  
 190 IC 618=41 Cr.L.J. 952=

Order restraining—11/1941/10

ble this by itself is no ground for restraining the newcomer from carrying his trade unless he is doing or about to do any wrongful act which may lead to a

—S 144—Disobedience of order under—Prosecution for—Trial after withdrawal of order—Legality

*and Sen v* EMPEROR v RAJENDRASINGH HAM-SING

S 145  
 under S 145—Order under S 144—Propriety  
 For a Magistrate to proceed under S 144, Cr. P Code, in spite of directions to him by his superior to proceed under S 145 and when the case properly falls under S 145 is an unwarranted use of S 144 altogether. (*Dhanu v*) BINDHESHWARI SINGH v RAGHUNANDAN MAHTO  
 188 IC 330=  
 13 RP 12=6 B.R. 648=41 Cr.L.J. 578=  
 1940 P.W.N. 824=21 Pat.L.T. 413=  
 A.I.R. 1940 Pat 559

—S 144—Duty of Magistrate—Definite statements of acts prohibited—Necessity for—Delegation by Magistrate of discretion to Public Relations Officer—Order directing party to abstain from acts which the Public Relations Officer does not approve of—Legality  
*See* 1939 D.G., Col 399 ARDESHIR PHIROZSHAW MURZBAN, *In re*  
 186 IC 477=12 R.B. 352=  
 41 Cr.L.J. 319=A.I.R. 1940 Bom 42.

—S 144—Interpretation—Or to the public generally when frequenting or visiting a particular place.

## CR P CODE (1898), S 144

The words or to the public generally when frequenting or visiting a particular place occurring in S 144, Cr P Code, are wide enough to include all members of the public when within the defined area or at the defined

1910 A.W.R. (H.C.) 449=1940 A.L.J. 547=  
 1940 A.Cr.C. 124=A.I.R. 1940 All 465

—S 144—Order under—Contents of—Reasons for

—S 144—Order under—Objection expressed as to

16 B.R. 396=A.I.R. 1940 Pat 364.  
 —S 144—Particular place—What is meant by

mistake  
 PEROR

is of Magistrate under—Mandatory  
 of Magistrate to pass—Bund created  
 person not in possession and  
 however—Order directing party in  
 possession to remove bund—Legality—Objection by  
 party erecting bund—Sustainability *See* 1939 D.G.,  
 131 NARAIN SINGH v NAND-  
 1940 P.W.N. 210=  
 11 Cr.L.J. 98=A.I.R. 1940 Pat 57  
 power of Magistrate under—Restriction  
 of liberty of the press—Limits to. *See* 1939 D.G., Col.  
 400 ARDESHIR PHIROZSHAW MURZBAN, *In re*  
 186 IC 477=12 R.B. 352=41 Cr.L.J. 319=  
 A.I.R. 1940 Bom 42.

—S 144—Proper order under  
*See* 1939 D.G., Col 399 ARDESHIR PHIROZSHAW MURZBAN, *In re*  
 186 IC 477=12 R.B. 352=  
 41 Cr.L.J. 319=A.I.R. 1940 Bom 42.  
*ment. (Braund, v) BHAGWATI PRASAD v EM-*  
 PEROR.  
 1940 A.W.R. (H.C.) 449=  
 1940 O.A. 793=1940 A.L.J. 547=  
 1910 A.Cr.C. 124=A.I.R. 1940 All 465

—S 144—Scope of order under S 144 against the public generally—Place, if should also be a public place  
 The scope of an order passed under S 144 Cr. Code, against the public generally is narrower than passed against an individual and served

## CR P CODE (1898), S 144

him Though in sub S (3) of S 144 the word 'public' has not been used with the expression 'particular place' still the law intends not only that the particular place should be specified but also that it should which is frequented or visited by the public

*Hasan J.* HABU v EMEROR 15 Lu  
12 B O 278=185 I O 745=1940 O

1940 A W R (C) 50=1940 O A 128=

1940 O W N 118=41 Cr L J 228=

1940 A Cr O 45=A I R 1940 Oudh 241

—S 144—Service of order—Copy not stuck up as required by S 134—Order, of a nullity

the order had knowledge of its contents (*Edgley, J.*)  
ABU HUSSAIN SHAIK v EMEROR  
I L R (1940) 2 Cal 110=190 I O 228=

41 Cr L J 861=13 B O 157=44 O W N 641=

—S 144 (1), 2nd para—Or  
gation—Affixture to conspicuous f

so as to prevent the conviction of a person who having knowledge of the order nevertheless disobeys it (*Meredith, J.*) MADAN KISHORE AND HADRI LAL,  
In the matter of 187 I O 155=12 B P 578=

41 Cr L J 414=21 Pat L T 231=6 B R 425=

1940 P W N 469=A I R 1940 Pat 446

—S 144 (1), (2) and (3)—Scope of—  
assue order to general public—Limits of  
Dig, Col 401 SAT NARAIN v EMEROR

I L R (1939) All 934=185 I

12 B A 307=41 Cr L

—S 144 (3)—General orders to public—Legality  
The plain meaning of sub-S (3) of S 144, Cr P

certain act but an order to the public generally to abstain from a certain act on the occasions when they happened to visit a particular place would be valid The law does not contemplate the prohibition of the fre queuing or visiting of the particular place but the prohibition of some act on an occasion on which such place is frequented or visited (*Edgley, J.*) ABU HUSSAIN SHAIK v EMEROR

I L R (1940) 2 Ca :

41 Cr L J 864=13 B O 1

—S 144 (3)—Order prohibiting meeting within a certain area—Legality See 1939 Dig, Col 401 NIIHARENDRA DATTA MAJUMDAR v EMEROR  
I L R (1939) 2 Cal 507=12 B O 318=

41 Cr L J 105

## CR P CODE (1898), S 145

—S 144 (3)—"Particular place"—Meaning of—  
Limits of Union Committee—If particular place  
There is no reason why the limits of a Union Com

the manner of promulgation of the order An order 'for bidding the assembly of five or more persons in any public place street or thoroughfare within the limits of th N. Union Committee and forbidding the carrying of any lathi or weapon by any person within those limits', is valid order and

21 Pat L T 231=6 B R 425=1940 P W N 469= A I R 1940 Pat 446

—S 144 (6)—Extension of order after its expiry—  
Power of Local Government  
S 144 does not permit the Local Government to re-

ence of complainant—Dismissal—  
1939 Dig Col 401 RAQUMA v.  
Cr L J 96 (2)=1940 A Cr O 4= A I R 1940 Oudh 22  
phicability—Claim to joint posses-  
under S 145—Propriety of See  
ZAFAR AHSAN v JUGESHWAY  
6 B R 155

HUX  
—S 145—Applicability—Joint possession  
When it is found that the contesting parties are actually in joint possession no order should be made under S 145, Cr P Code But the position is different where one of the parties claims to have and is actually found

—S 145—Applicability—Joint possession claimed

A I R 1940 Pat 135.  
—S 145—Attachment of property—Subsequent dropping of proceedings—Order for delivery to one of the parties is justified—Proper order See 1939 Dig, Col 402 DALJIT SINGH v TEJ SINGH 15 Luck 19

—S 145—Decision of Civil Court—Delivery obtained through Court—Binding nature—Limits of rule

son at the time is not the judgment debtor but one of the decree holders claiming exclusive title (*Gruer, J.*) SHEOPRASAD v GOVINDRAM, 189 I O 774= 41 Cr L J 799=13 B N 78=1940 N L J, 375= A I R 1940 Nag 265

## CR P CODE (1898), S 145

—S 145—Duty of Magistrate—Possession given by Civil Court—Duty of Criminal Court to respect—If

trate cannot pass an order in favour of the first party on the basis of an order obtained by that party in a previous proceeding under that section in which the second

—S 145—Enquiry under—Proof of possession—Delivery of possession by Civil Court—Evidentiary value

In an enquiry under S 145 Cr P Code the Crimi-

behalf of zamindar and another person has squatted on that land and thereupon he has done so that they

the Court itself to make an enquiry and to find out who is in actual possession. The procedure laid down under S 145 does not contemplate that the question as to who is in actual possession should be delegated, even by the consent of parties to an arbitrator. The section directs the Magistrate himself to receive the evidence adduced by the parties and, on a consideration thereof to come to a decision. (*Ganga Nath*) AHMAD ULLAH & SRINIWAS JOSHI 1940 A L J 758

## CR P. CODE (1898), S 145

When a Magistrate relies on the police report in his preliminary order under S 145, Cr P Code and the

—S 145—Procedure—Dispute as to possession of land—Notice to parties—Filing of written statements and documents—Proper course for Magistrate—Substitution of proceedings under S 144—If justified—Duty

as to possession of land, where in them to state dispute and the and document S 145, Cr P

Court, the Magistrate should not adopt a short cut by substituting proceedings under S 144, Cr P Code so as to avoid the trouble of taking oral evidence. The Magistrate must proceed to complete the proceedings

public tranquility and save the realm from riots and

—Ss 145 and 146—Symbolical possession obtained under decree of Civil Court—Magistrate if can ignore *Sir* 1939 Dig. Col 404 MAUNG KAN & MAUNG TO TOK. 1940 Rang L B 157-183 I C 119-120 12 E. R. 183-41 Cr L J 123.

—S 145 (1)—Construction—"A real possession"—If refers to right to possess What the Magistrate is concerned with is proceedings relating to disputes as to immovable property under



## CR P CODE (1898), S 145

ous and has no reference to any right to possess (Davis, J C and Lobo, J) RAHIMALISHAH :  
EMPEROR I L R (1940) Kar 421=

187 I C 627=41 Cr L J 493=12 R S 253=

A I R 1940 Sind 61

—S 145 (1)—Preliminary order—Prolonged in  
quarry—Properly

it is not proper to set up any absolute standard and to say that evidence not up to this standard will not be acted on by the Court for the purpose of an order under that section. The proceeding can be decided on the balance of evidence and if the Magistrate can see his way to express an opinion that the evidence of one side is superior to the evidence on the other side then he is entitled to and should, if possible, form a definite opinion on the question of fact as to who is in possession. An order under S 146 attaching the property is a desperate remedy for cases in which the Magistrate finds it quite impossible to choose between the conflicting evidence adduced by the two sides. It would be regrettable if it were necessary to pass such an order when the first Court has been able to make up its mind in favour of one party. If the Magistrate thinks that the evidence for the first party, weak though it may be, is preferable to the evidence for the second party, it is his duty to give a decision in favour of the first party. (Rowland, J)

NANDKISHORE SINGH v BIGAN LOHAR

184 I C 817=6 B R 81=1940 P W N 6=

12 R P 281=41 Cr L J 101=

21 Pat L T 306=A I R 1940 Pat 113

—S 145 (4)—Enquiry under—Special oath  
Offer by one party to give up claim if opposite  
party takes special oath—Refusal by latter to do  
so—Power of Court to take this into considera-  
tion

If one of the parties to a proceeding under S 145, Cr P Code, offers to give up his claim to the property in dispute if the opposite party takes a special oath but the latter refuses to do so, this refusal is of course not to be treated as anything conclusive, but it is a matter which the

KISHORE SINGH v BIGAN LOHAR

184 I C 817=6 B R 81=1940

12 R P 281=41 C

21 Pat L T 306=A I R 1940 Pat 113

## CR P CODE (1898), S 145

tion to proceed in the matter. It is not absolutely necessary that in the final order recorded by him with regard to the question of possession there should be any further finding on the question of the imminence of a breach of the peace. (Edgley and Akram, J J)

GOPARUHAN DUBAY v KHIROD CHANDRA BANERJEE

44 C W N 427=71 C L J 152

—S 145 (4) and (5)—Scope—If exhaus-  
tive—Power of Magistrate to drop or terminate  
proceedings—Existence of  
information  
duct of par  
proceedings  
and (5) of

have ceased to exist. S 145 (5) pro-  
vides for a special case and does  
not prevent the Magistrate from terminat-  
ing or dropping the proceedings if he is satis-  
fied that there is no likelihood of a breach of  
the peace. It is, however, desirable that they  
should be terminated with some formality. In  
other words, he should have on record a police  
report or other information to the effect that  
no dispute likely to cause a breach of the peace  
exists in the same as proceedings are instituted  
on some information. But where the diary of a  
case shows that the parties attended the Court

a breach of the peace existed any longer and  
would justify an order terminating the proceed-  
ings. Information derived from the Court diary  
and the conduct of the parties is as good as  
any other. (Davis, J C and Tyabji, J) MA  
HOMED AYOUB SAIFUDDIN KHAN v GULZAR ME  
HAR

I L R. (1939) Kar 775=

187 I C 752=12 R S 265=

41 Cr L J 507=A I R 1940 Sind 51

—S 145 (4)—Scope—Mandatory character—

Omission to hold inquiry—Effect

Sub Ss (1) (4) (5) and (6) of S 145 are comple-

circumstances therein contemplated. The words of

## CR P CODE (1898), S 145

that the holding of the said inquiry is a condition precedent to the making of the order under sub-S (6). It is erroneous to make an order under sub-S (6) without having ever held any inquiry under sub-S (4). (*Lobo J C and O Sullivan J*) MAHOMED ALI v SHAMSUL HAQ I.L.R. (1910) Kar 162 187 IC 636=41 Cr L.J. 486=12 E.S. 255=A.I.R. 1910 Sind 33

—S 145 (4) Proviso—Within two months next before the date of such order—Meaning of

The inquiry under sub-S (4) is as to possession on the date of the preliminary order under sub-S (1) and the words of the proviso 'within two months next before the date of such order' are precise and unambiguous. It is difficult to see how these words afford any scope for holding that in those cases where a Magistrate does not make a preliminary order within two months of the dispossession the party complaining is still entitled to proceed under S 145. The words 'two months before the date of such order' mean two months before the date of the preliminary order. (*Lobo J C and O Sullivan J*) MAHOMED ALI v SHAMSUL HAQ I.L.R. (1910) Kar 162 187 IC 636=41 Cr L.J. 486=12 E.S. 255=A.I.R. 1910 Sind 33

—S 145 (4), second proviso—Interim attachment—Power of Court—Land claimed to be in joint possession

Under S 145 (4), second proviso Cr P Code, the Magistrate is empowered to attach the land in dispute if he considers that it is a case of emergency although according to one of the parties the land is in the joint possession of both the parties. (*Ghose J*) EMPEROR v BANDE ALI SHAIKH I.L.R. (1939) 2 Cal 419=187 IC 125=41 Cr L.J. 396=12 R.C. 549=A.I.R. 1940 Cal 163

—S 145 (5)—Power to cancel preliminary order under S 145 (5). See 1939 D.G., Col 405 SINGH v TEJ SINGH 15 Lu.

—S 145 (6)—Filing of possession in fact—petitioner—Direction to petitioner to restore ceremonies and give access to Moslems—Power of Magistrate to order. See 1939 D.G. Col 406 BALAKRISHNA REDDIAR v SYED JALALUDDIN SAHIB 41 Cr L.J. 18

—S 145 (6)—Possession—Possession of well in Railway property—Railway authority entitled to eject person as trespasser—Order declaring Railway authority in possession—If justified

Where the railway authorities establish a case under S 122 Railways Act entitling them to eject the person asserting possession over a well in the railway premises, the person ejected cannot be said to have been forcibly and wrongfully dispossessed and therefore the Magistrate is justified in passing order under S 145 (6) declaring the Railway authorities entitled to possession of the well. (*Datta J C and Weston J*) HITCHAND RANCHAND v EMPEROR I.L.R. (1910) Kar 504=190 IC 716=A.I.R. 1910 Sind 167.

—S 147 (2)—Ad interim order—Power of Magistrate to pass

S 147 (2), Cr P Code contemplates a final order made after due enquiry in the manner provided for by that section and does not justify an interlocutory order prohibiting interference with the existing rights pending decision in the proceeding. But if the Magistrate finds it necessary to pass an ad interim order of any kind he may do so in the manner provided by S 145 Cl (4) proviso 2, Cr P Code. (*Barley and Ladd J*) KHODA BUX v. MOHAMMAD HAQUEY 189 IC 354=13 E.C. 80=41 Cr L.J. 728=44 C.W.N. 623=A.I.R. 1910 Cal 330

## CR P CODE (1898), S 162

—S 147 (2)—Mandatory injunction—Power of Magistrate

S 147 (2) Cr P Code does in a proper case cover the power of a Magistrate to order a person to do something or in other words the power to direct a mandatory injunction. Where it is found that by reason of the erection of a fencing, an obstruction to the right of way of the complainant is caused an order directing removal of the obstruction is valid. (*Ahmedkar and Edgley J*) BADRIDAS AGARWALLA v SOHAN LAL OSWAL I.L.R. (1910) 1 Cal 468=41 C.W.N. 368=A.I.R. 1910 Cal 545

—S 155 (2)—Prohibition contained in—Nature of

The prohibition contained in sub-S (2) of S 155, Cr P Code, is not absolute but is qualified by the phrase "without the order of a Magistrate" and the preventive action of the police is not restricted to the prevention of cognizable offences only. The police derive their power not only from the Code of Criminal Procedure but also from the Police Act and S 23 of the latter Act gives them wide powers for prevention of offences and breaches of the law generally. (*Thomas C J and Zia ul Hasan J*) EMPEROR v THAKURI 189 IC 655=41 Cr L.J. 778=1910 C.W.N. 655=1910 A.C. 103=13 E.C. 103=1910 O.L.R. 492=A.I.R. 1910 Oudh 413

—S 156 (3)—Scope—Power of Magistrate to refuse to take cognizance of offence on presentation of complaint—Duty of Magistrate on presentation of complaint

S 156 (3) Cr P Code relates to a stage before the Magistrate has taken cognizance of the offence and not after but a Magistrate cannot refuse to take cognizance of an offence upon a complaint made to him within the time prescribed by the rule. He cannot refuse to take cognizance of it and send it to the police for inquiry and then dispossess it by executive orders and by a "B" Summary. (*Datta J C and Lobo J*) SHAHJAD GUDAI v EMPEROR I.L.R. (1910) Kar 451=A.I.R. 1910 Sind 216

—S 159—Identification—Reference to makhnama—Permissibility

Section 159 is wide enough to cover reference to a makhnama as to what was done or seen but not as to what was said. There should then be no practical difficulty in the way of adducing sufficient evidence of identification tests in Court to preserve the utility. (*Datta J C and Weston J*) MOR MAHOMED v EMPEROR I.L.R. (1910) Kar 487=180 IC 499=13 E.S. 81=41 Cr L.J. 924=A.I.R. 1910 Sind 168

—Ss. 151 and 162—"Any person" in S 161 if includes one who may become the accused later on—S 162 if applies to a thief

"Any person" occurring in S 161, Cr P Code, which must be read with S 162, includes any person who may subsequently be accused of the crime which is being investigated. Hence S 162 applies to a person who is suspected of having committed the crime. It is the subject matter of investigation. (*Asper J*) DHANATH v EMPEROR I.L.R. (1910) Nag 222=189 IC 591=13 E.N. 53=41 Cr L.J. 757=1910 N.L.J. 657=A.I.R. 1910 Nag 129

—S 162—Applicability—S 162 is inapplicable in investigation not resulting in arrest—Case of statements to police to contradict witness—Procedure

The provisions of S. 162, Cr P Code do not apply to statements made in an investigation where there is

## CR P CODE (1898), S 145

ous and has no reference to any right to possess (Davis, J.C. and Lob  
EMPEROR

187 I.C. 627=

—S 145 (1)—Preliminary order—Prolonged in  
quarry—Propriety

Sub-S (1) does not contemplate any sustained inquiry

—S 145 (4)—Enquiry under—Proof re-  
quired—Order under S 146—When not proper

In a proceeding under S 145, Cr P Code, it is not proper to set up any absolute standard and to say that evidence not up to this standard will not be acted on by the Court for the purpose of an order under that section. The proceeding can be decided on the balance of evidence and if the Magistrate can see his way to express an opinion that the evidence of one side is superior to the evidence on the other side, then he is entitled to and should, if possible, form a definite opinion on the question of fact as to who is in possession. An order under S 146 attaching the property is a separate remedy for cases in which the Magistrate finds it quite impossible to choose between the conflicting evidence adduced by the two sides. It would be regrettable if it were necessary to pass such an order when the first Court has been able to make up its mind in favour of one party. If the Magistrate thinks that the evidence for the first party, weak though it may be, is preferable to the evidence for the second party, it is his duty to give a decision in favour of the first party (Rowland, J.)

NANDKISHORE SINGH v BIGAN LOHAR

184 I.C. 817=6 B.R. 81=1940 P.W.N. 6=

12 R.P. 281=41 Cr.L.J. 101=

21 Pat.L.T. 306=A.I.R. 1940 Pat. 113

—S 145 (4)—Enquiry under—Special oath  
—Offer by one party to give up claim if opposite  
party takes special oath—Refusal by latter to do  
so—Power of Court to take this into considera-  
tion

If one of the parties to a proceeding under S. 145, Cr P Code, offers to give up his claim to the property in dispute if the opposite party takes a special oath but the latter refuses to do so, this refusal is of course not to be treated as anything conclusive, but it is a matter which the Court is entitled to take into consideration along with the other facts. It is not to be drawn such party as it

NANDKISHORE SINGH v BIGAN LOHAR

## CR P CODE (1898), S 145

tion to proceed in the matter. It is not absolutely  
ary that in the final order recorded by him with  
to the question of possession there should be any  
finding on the question of the imminence of a  
of the peace (Edgley and Akram, JJ.)

GOBARDHAN DUBY v. KHIROD CHANDRA BANERJEE  
44 C.W.N. 427=71 C.L.J. 152

—S 145 (4)—Finding as to possession of first

a part of the first party's case (Edgley and Akram, JJ.)  
GOBARDHAN DUBY v. KHIROD CHANDRA BANERJEE  
11 C.W.N. 427=71 C.L.J. 152

—S 145 (4) and (5)—Scope—If exhaus-  
tive—Power of Magistrate to drop or terminate

existence of  
Information  
fact of por-  
ceedings  
and (5) of

S 145, Cr P Code, are exhaustive or prevent

vides for a special case and does  
not prevent the Magistrate from terminat-  
ing or dropping the proceedings if he is satis-  
fied that there is no likelihood of a breach of  
the peace. It is, however, desirable that they  
should be terminated with some formality. In  
other words, he should have on record a police  
report or other information to the effect that  
no dispute likely to cause a breach of the peace  
exists in the same as proceedings are instituted  
on some information. But where the diary of a  
case shows that the parties attended the Court

a breach of the peace existed any longer and  
would justify an order terminating the proceed-  
ings. Information derived from the Court diary  
and the conduct of the parties is as good as  
any other (Davis, J.C. and Tyabji, J.) MA  
HOMED AYOUB SAIFUDDIN KHAN v GULZAR ME-  
HAR.

I.L.R. (1939) Kar. 775=

187 I.C. 752=12 R.S. 265=

41 Cr.L.J. 507=A.I.R. 1940 Sind 51.

—S 145 (4)—Scope—Mandatory character—  
Omission to hold inquiry—Effect

Sub-Ss (1), (4), (5) and (6) of S. 145 are comple-  
mentary. Once an order has been passed under sub-S.

CR. P. CODE (1898), S 145.

CR. P. CODE (1898), S 162

S 147 (2)—Mandatory injunction—Power of

words of the proviso "within two months next before the date of such order" are precise and unambiguous. It is difficult to see how these words afford any scope for holding that in those cases where a Magistrate does not make a preliminary order within two months of the dis-possession the party complaining is "till entitled to proceed under S 145. The words "two months before the

—S—

The prohibition contained in sub S. (2) of S. 155, Cr. P. Code, is not absolute but is qualified by the phrase "without the order of a Magistrate . . ." and the preventive action of the police is not restricted to

attachment—Power of Court—Land claimed to be in joint possession

Under S 145 (4), second proviso, Cr

1894 O.W.N. 655=1910 A.Cr.O. 103=

12 R.C. 549=A.I.R. 1940 Cal. 163.

stage before the offence and not take cognizance of an offence upon a complaint made to him within the

41 Cr.L.J. 18

A.I.R. 1940 Sind 215

S 145 (6)—Possession—Possession of well in Railway property—Railway authority entitled to eject person as trespasser—Order declaring Railway authority in possession—If justified

Where the Railway authorities establish a case under S 122, Railway asserting possession of the person eject and wrongful, rate is justified declaring the of the well (RANCHAND).

S 159—Identification—Reference to mashnama—Permissibility.

Section 159 is wide enough to cover reference to a mashnama as to what was done or seen but not as to what was said. There should then be no practical diffi-

—S 147 (

treats to pass.

S 147 (2), Cr. P. Code, requires to a person who is

## CR P CODE (1898), S 162

which results in a trial in which those statements are

admission of the witness that he made the statement or by examination of the police officer who recorded it. If the latter course is unnecessary in order to avoid delay, there can be no objection to allowing cross-examination subject to subsequent proof of the statement. In other words formal proof prior to the cross-examination of the witness on his previous statement is unnecessary. If

—S 162—Applicability to suspects. See CR P CODE, SS 161 AND 162. I L R (1940) Nag 320

—S 162—Construction—Statement under—Admissibility. See 1939 Dg Col 403 NARAYANASAMI v EMPEROR 6 Cut LT 25 (PC)

—S 162—Copy of statements—Accused's right to—Stage of trial

An accused person is entitled to be furnished with a copy of the statement of a prosecution witness recorded by the police under S 162 Cr P Code only when the

See 1  
S 162

—E

gation—

KRISHNA KAHAR v EMPEROR

I L R (1939) 2 Cal 569—187 IC 129=  
12 RC 550—41 Cr LJ 405—A L R 1940 Cal 182

—S 162—If specifically affects S 27, Evidence

At

in the course of an investigation. In other words, these

investigation on report resulting in trial—Complaint

under S 211

report—Statement

Use of—C

Where a per

another had robbed him of a currency note and the

whether the statement made by him (i.e., the com-

plainant in the case under S 211, I P Code)

during investigation when he was an accused person

could be put to him. It was held that S 162, Cr P

Code had no application to the case at all and that the

## CR P CODE (1898), S 162.

use of the statement in question was governed by the provisions of the Evidence Act and that in assessing the testimony as elicited by the cross-examination Magistrate must take into consideration the position when the statements which were put to him were made, he was in the position of being suspected of a criminal offence (Grille, J) THE CROWN v PARMU.

I L R (1910) Nag 320

—S 162—Scope—Charge of attempt to murder—

Complaint made by accused to police previously admit-

ting stabbing complainant in self defence—Admissibility

against accused. See 1939 Dg, Col 403 GURU

HEVAN, In re 51 L W 743=

(1910) 1 M L J 747

—S 162—Scope—Evidence of conduct—If ex-

press or implied, made by witnesses to the police

during the course of the investigation, but care must be

taken not to shut out evidence of what a witness saw or

did. Conduct must be distinguished from speech

(Dimi, J)

PEROR

13 R S

—S

CODE S 94 42 Bom L R 787

—S 162—Scope—Tracker—Statement as to what

he saw or did at identification of footprints during

police investigation—Admissibility

In spite of S 162 a tracker can say in Court that

during police investigation he recognized on a certain

A L R 1940 Sind 168.

—SS 162 and 164—Statement by accused to

Magistrate—Admissibility—Self exculpatory statement

—If to be treated as confession statement

In view of the provisions of S 162 Cr P Code it is

not possible for an arrested person to make a

statement in evidence

when arrested

according to

fence under the

Indian Law. But an accused person can—if he knows

it—make a statement of his version of the case before

a Magistrate under S 164. Such a statement is ad-

missible though it should not be treated as a confession

statement when it is self exculpatory (Burn and

Mockett, JJ) APPAIANARASAYYA v EMPEROR

1940 M W N 937—52 L W 495=

(1910) 2 M L J 715

—S 162—Statement made to customs officer—

Col 409 GHULAM

41 Cr LJ 40

to police—If can be

A statement taken from a witness by the police

or be used by the prosecution

even though he is examined

a statement cannot be used

by any one but a prosecution

witness (Bartley and Lodge, JJ) BHUPAL

CHANDRA NASKAR v EMPEROR 44 C W N 451.

—S 162—Statement made to police—If that

amounts to—Statement made to another person in pre-

sence of police

CR P CODE (1898) S 162

CR P CODE (1898), S 164

Per *Young C J and Bhid*  
person makes a statement to ar  
of the police whether that  
other person or to the police  
not of law If it is found on the facts of any case, that  
a statement made to a third person was in reality intend  
ed to be made to the police and was represented as  
having been made to a third person merely as a colour

—Ss 164 and 533—Omission to take accused's  
signature to statement—If curable under S 533

The omission to take the accused's signature to a  
statement is not necessarily fatal to its admissibility in  
omission with reference to a  
Cr P Code were to vitiate  
the Code would be rendered  
actly for a case of this nature

be treated as a statement made to the police and as such  
excluded by S 162 The question is thus one of fact  
(*Young C J and Bhid*)  
*Din Moha*  
VAR v EM

that the provisions of S 533 of the Cr P Code are  
enacted (*Grille and Bose JJ*) *SAMLA HARDEO v*  
1910 M T 107

—S

of  
It is not permissible to use statements of witnesses  
made to the police during investigation in order to show  
that the evidence in Court did not introduce any new  
matter Under S 162 Cr P Code such statements  
can only be used for the purpose of contradicting the  
prosecution witnesses and not for corroborating them  
(*Harries C J and Rowland J*) *EMPEROR v GIR*  
*DHARI*

13

But the mere fact that a person's statement was recorded  
under S 164 will not be sufficient to discard it The  
Court has however to receive it with caution and if it is  
supported by other evidence can act upon it (*Grue*  
*and Purank JJ*) *PARAMANAND v EMPEROR*  
190 IC 849=1910 N L J 459=

AIE 1940 Nag 340

—Ss 164 and 533—Retracted confession—Admis

Portion  
Col 46

the course of

The words in the course of in the context in which  
it occurs in S 162 (1) Cr P Code import that the  
statements must be made as a step  
gation to be used in that  
confine the words merely to the s  
elapses between the beginning a  
nvestigation is to put too narrow  
them The exact shade of the me  
may well vary according to the context  
qualify a period of time they are used to denote a span  
of time and where on the other hand they qualify a con

admissible But where the requirements have been  
attempted to be satisfied but there is still some formal  
defect in the procedure followed as for instance the

Where a retracted confession which establishes the

the basis of his confession which was subsequently  
retracted (*Abdul Qayoom, C.J. and Aichin J*)  
S 58

instances of  
an accus  
him, the  
t oath or  
(*Aspegi*

J 423=

Nag 218,

conced to

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nts or

## CR. P. CODE (1898), S 161

essions recorded shall be forwarded to the Magistrate

*fession—Asking accused to think over matter and state what really happened as otherwise statement would be used against him—If sufficient*

Where all that the Magistrate recording a confession under S 26, Evidence Act, says to the he should think over the matter and it happened as otherwise the statement

—S. 161 (3)—Record of confession—Essentials to be observed—Duty of Magistrate to question accused to ascertain voluntary character—Omission to put such questions—Effect on admissibility in evidence

The provisions of S 164 (3) Cr P Code are mandatory and

going to be made by the accused voluntarily  
plated by S 164, Cr P Code Neither  
the confession nor the statements of

tarily the statement enclosed I fully believe that his  
confessional statement is quite voluntary free from any  
influence

Held, that though the facts disclosed in the memo

Since the explanations in the memorandum are not  
complete the presumption under S 80 of the Evidence  
Act that the confession was 'duly taken'

(Varma and Meredith, JJ) EMPEROR  
BRAHMAN

12 E P 674=41 Cr L J 533=  
1939 P W N 915=A I R 1

—S 161 (3)—Scope—Compliance  
Magistrate recording confession—Warms  
—Nature of

A Magistrate who records a confession  
of the Evidence Act which he knows r  
definite crime which has been committed  
investigated at the time, acts under  
has to observe the rule laid dc

must before recording the statement explain to  
king it that he is not bound to make a  
that if he does so it may be used as  
him It is not enough for the Magis  
the person making the statement

## CR P CODE (1898), S 188

that he should think over the matter and state what  
y happened as otherwise the statement would be  
against him This would not satisfy the require  
is of S 164 (3) (Lakshmana Rao and Stodart,

EMPEROR v PEKUNIAL KUDUMBAN

191 I O 37=1940 M W N 358=51 L W 535  
A I R 1940 Mad 562

—S 165—Recording of grounds—If mandatory  
Police officer acting bona fide but not recording grounds  
—Search, if justified See 1939 Dig, Col 410

S 181 (Khandkar and Idgley, JJ) HUDA v ALI  
HUSSAIN

189 I C 876=13 E C 128=  
41 Cr L J 812=A I R 1940 Cal 367

—S 181 (2)—Criminal breach of trust—Place of  
trial

ALI HUSSAIN 189 I C 876=  
128=41 Cr L J 812=A I R 1940 Cal 367

181 (2)—Criminal misappropriation—Place  
of trial—Liability to account at a place—If confers  
jurisdiction in that place See 1939 Dig, Col 411

EMPEROR v FATEH SINGH I L R (1940) All 43=  
186 I C 481=12 E A 436=41 Cr L J 325=  
A I R 1940 All 92

orial jurisdiction—Complainant  
accused in B—Com  
nd 417, I P Code—Pro  
411 G A St GEORGE  
I L R (1939) All 851

—S 182—Place of trial—Charge under S 420, I.  
P Code—Place where cheating and parting with money

42 Bom L R 904  
—S 188—Absence of certificate or sanction—If  
violates trial

A Magistrate has no jurisdiction to try an accused in  
the absence of a certificate or sanction, and a trial with

## CR P CODE (1898) S 188

out certificate or sanction is void (*Almond, J C and  
Mir Ahmad J* KHAWAS HABIB: EMPEROR

188 IC 290=12 R Pesh 41=

41 Cr LJ 565=A I R 1910 Pesh 4

—S 188 and Child Marriage Restraint Act  
(XIX of 1929) S 9—*Marriage in Native State—  
Complaint within one year but certificate obtained after  
one year—Trial of legal*

Where a marriage in contravention of the Child  
Marriage Restraint Act is performed  
and a complaint is filed in British  
but without a certificate as required  
Code, and the certificate is obtained  
year, there is no reason why cognate  
legally taken even though the fo

## CR P CODE (1898), S 192

—S 190 (1) (a)—*Jurisdiction—Initiation of  
proceedings—Person named as offender—If necessary*

It is not a condition requisite for the initiation of  
proceedings in a Criminal Court that there should  
necessarily be a person named as the offender. The  
Magistrates mentioned in S 190, sub-S (1) are empowered  
to take cognizance of an offence whether or not the  
complaint before them charges any particular individual  
or individuals with having committed the offence

because S 190 refers in terms to 'offence' and not  
offender  
of an offence  
Weston J  
HOTCHAN

## A I R. 1940 Sind 100

—Ss 190 191 and 351—*Relative applicability of  
Ss 190 and 351—Detention of witness and trial under*

J) HAFIZAR RAHAMAN v AMINAL HOQUE.

44 CWN 1114=72 CLJ 104

—S 192 (1)—*Case transferred after issuing  
accused*

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—S 190 (1) (a)—*Complaint against receiver—*

*Case transferred after summoning one of accused per  
sons—Jurisdiction of transferee Magistrate to summon  
the others*

When a case has been transferred to a  
under S 192 (1) Cr P Code, that Magis



## CR P CODE (1898) S 192

same authority, to deal with the case which has been transferred to him, as regards the issuing of processes and other matters connected with the inquiry or trial as is vested in the superior Magistrate from whom he received the case on transfer. If thereafter the superior Magistrate after an enquiry under summons one of the accused persons and then the case for disposal to a subordinate Magistrate latter has jurisdiction to summon persons again process had not been issued by the superior Magistrate. (Edgley J) HAFIZAR RAHMAN v AMINAL.

44 CWN 1114=72 O L J 104  
—S 192 (1)—Transfer of case—Powers of transferring Magistrate thereafter

When a case has been transferred from Cr P Code it is transferred for file of the superior Magistrate to that Magistrate and thereafter the superior Magistrate has no jurisdiction to issue any orders connected with the case except such as are contemplated under the provisions of S 526 and Chap XXXII of the Code. (Edgley J) HAFIZAR RAHMAN v AMINAL HOQUE.

44 CWN 1114=72 O L J 104  
—S 192 (1)—Transfer of case—When may be made

Under S 192 (1) Cr P Code, it is competent for a Magistrate to retain the case in his own file until after the accused summoned by him has appeared and then transfer it for disposal to a Subordinate Magistrate or to transfer the case immediately after the complaint has been examined before the issue of process. (Edgley J) HAFIZAR RAHMAN v AMINAL HOQUE.

44 CWN 1114=72 O L J 104

to prosecute and to leave the case open as against others. But even if such piecemeal transfer is in certain circumstances valid that portion of the case which has not been transferred must be clearly indicated in the order of transfer. In the absence of a clear indication as to which part of the case is retained on the file of the transferring Magistrate or some further indication to the effect that such Magistrate intended

CHIVANDAS v CHIVANDAS BUDHURAM  
I.L.R. (1940) Kar 275

—Ss 195 and 476—Complaints in respect of defamatory statements made in judicial proceedings—Sanction of necessary

There is nothing in Ss 195 and 476 which prevents a man from making a defamatory statement in respect of a statement made in judicial proceedings. The sanction of the authority before whom the statement is made

## CR P CODE (1898), S 195

necessary. Further according to S 198, it is only the person defamed who is given the sole right to file a complaint for defamation and hence the judicial authority before whom the statement is made is not

—Ss 195 and 537—Complaint under the directions of the High Court—Deputy Registrar, if can

of the High Court is the authority to file it was at the authority to file it was not given in writing is immaterial when as a matter of fact it is shown to have been filed after consultation with the Judges concerned and with their consent. The irregularity if any cannot in view of S 537 Cr P Code, impair the validity of the decision. (Niyogi, J) SHEOSHANKER v EMPEROR. 188 I.C. 835=41 Cr L.J. 637=13 B.N. 14=1940 N.L.J. 165=A.I.R. 1940 Nag 410

—S 195 and Central Provinces Debt Conciliation Act (1933) Ss 24 A and 18—Court in S 195 Cr P Code meaning of—Debt Conciliation Board, if can pass order under S 195—Order if appealable

105 Cr P Code, is of Civil S 24 A II pro the Bench shall be deemed to be a Court

1940 N.L.J. 23=A.I.R. 1940 Nag 184  
—Ss 196 and 190 and Penal Code S 182—Offence under S 182 I.P. Code—Absence of complaint of public officer—Effect

Where there is no complaint in writing of a public servant against a person accused of an offence under S 182 I.P. Code he cannot be convicted. The provisions of S 190 Cr P Code, are subject to the provisions

189 I.C. 702=O.L.E. 498=13 E.O. 114=10 W.N. 917=1940 Oudh 424

Offence of forgery before Court offences which 9 Dig. Col. 413 1940) Kar 95

—S 195—Scope—False allegation in plaint in suit—Complaint of defamation has no—Maintainability—Complaint by Court—Necessity

on an allegation in a false offence or a prosecution for Court is necessary



## CR P CODE (1898), S 195

—Action against his co accused for abetting offence—If

—S 195 (1) (c)—Applicability—User of forged Court—

Under S 471 I & II Code are committed not in the course of proceedings in Court but after the termination of the proceedings in suit, no complaint by the Court is necessary (*Lakshmana Rao J*) SUBBA

—S 195 (1) (c)—Charges under I P Code against presiding Judge—If necessary

Where a Subordinate Judge has abetted an offence under S 193 Penal Code and is also alleged to have committed offences under Ss 465 and 466, Penal Code, complaint by a Court so far as the offences under Ss 465 and 466 are concerned is not necessary, as he is not a party to the proceeding before the Court (*Dalip Singh and Blacker JJ*) BEHARI LAL v ABDUL QADIR

190 I C 178—13 B L 140—  
41 Cr L J 843—A I R 1940 Lah 292

—S 195 (1) (c)—Court—Mukhtarkar holding

—S 195 (1) (c)—Offences specified in—  
plaints in respect of against persons not par  
proceedings before Courts mentioned in S 476—  
of such Courts to prefer Set CR P CODE Ss 476  
AND 195 (1) (c) I L R (1940) Nag 652

—S 195 (1) (c)—Proper Court to complain—Suit  
before various Courts

If a case or proceeding has been  
Courts and an offence is alleged to have  
in that proceeding or case falling  
sections prescribed in S 195 Cr  
Courts have jurisdiction to make  
normally speaking the proper Court  
plaint is the Court which finally  
the suit Hence, where an offence  
course of a suit before a Court a  
quently transferred to another Court the latter Court is  
competent to make a complaint under S 195 AIR  
1929 Cal 724 Rel on (*Dalip Singh and Blacker,  
JJ*) BEHARI LAL v ABDUL QADIR

190 I C 178—13 B L 140—41 Cr L J 843—  
A I R 1940 Lah 292

## CR P CODE (1898), S 195

—S 195 (2)—“Court”—Appellate officer under

—S 195 (2)—Court—Interpretation of—Deb  
Settlement Board—If Court—Bengal Agricultural  
Debtors Act, S 3

Courts which can make a complaint under S 195 Cr  
P Code, are not restricted to the Courts detailed in  
S 476 Cr P Code The term ‘Court’ in S 195 must  
be interpreted in a wider sense so as to include Courts  
which are outside the Criminal Civil and Revenue  
Courts If a tribunal has power to regulate legal rights  
and to enforce  
its procedure is  
as the taking of

evidence and the administration of the oath then it is  
a ‘Court’ An essential feature of a Court is that it  
must be one in which justice is judicially administered  
and which is empowered to arrive at an independent  
judicial decision on legal evidence Debt Settlement  
Boards constituted under the Bengal Agricultural  
Debtors’ Act are merely units of a Department  
of Government, which have been constituted for  
the purpose of settling debts They have not been  
set up as independent judicial tribunals for the pur-  
pose of administering justice according to ordinary  
judicial principles but for the purpose of putting into  
effect the policy of the Government  
which controls their  
and the jurisdiction of  
by the Legislature for  
accordance with the  
es concerned They  
agents of the Local  
legal powers for a  
not be regarded as  
in line with which that  
Code Consequently  
necessary for a prosecution

—S 195 (3)—Appeals lying from Sub Judge to  
both senior Sub Judge and District Judge—Sub Judge  
to whom subordinate

For purposes of S 195 Cr P Code, the appellate  
judge is taken to be the  
is subordinate when  
more than one Court  
Court of Subordinate  
Judge and to the Senior  
the Subordinate Judge  
ordinate Judge for the  
J) NOOR MOHAM  
42 P L R 23

—S 195 (4)—Abetment—If ‘offence’

Under Sub S (4) of S 195 an ‘offence’ under the  
section includes abetments and attempts, so that if a  
complaint of the Court is necessary in the case of the  
substantive offence it is also necessary in case of an  
abetment (*Dalip Singh and Blacker JJ*) ASSUDOMAL

CR P CODE (1898), S 196

RAMANDAS P. JIAWANDAS HOTCHAND

1 L.R. (1940) Kar 435=120 IC 222=

41 Cr L.J. 261=13 B.S. 73-A.I.R. 1940 Sind 100

S 196—If affects Defence of India

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S 197—Arbitrator—Prosecution of—Sanction if necessary

It is clear from the provisions of S. 11, Para 16 C.P. Code that an arbitrator is not empowered to give a judgment at all. He makes an award and the Court passes judgment thereon. An arbitrator therefore is not a Judge within the meaning of S. 19 or S. 21 Penal Code and sanction under S. 197 Cr.P. Code for his prosecution is not necessary. (Almond J.)

PEAREY LAL v. EMPEROR 191 IC 91=

AIR 1940 Pesh 41

S 197—Discharge of official duty—Prosecution of member of Debt Settlement Board for receiving bribes

Sanction—If necessary

S 197—Discharge of official duty—Prosecution of member of Debt Settlement Board for receiving bribes

Sanction—If necessary

S 197—Discharge of official duty—Prosecution of member of Debt Settlement Board for receiving bribes

Sanction—If necessary

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S 197—Discharge of official duty—Prosecution of member of Debt Settlement Board for receiving bribes

Sanction—If necessary

S 197—Discharge of official duty—Prosecution of member of Debt Settlement Board for receiving bribes

Sanction—If necessary

CR P CODE (1898), S 202

According to S 7 of the Police Act it cannot be said that a sub-inspector is a public servant who is not removable from his office save by or with the sanction of the Government.

S 202—Complaint—Petition of protest to magistrate before receipt of police report—If complaint

See CR P CODE, S 436 21 Pat LT 1026

S 202—Complaint impugning bona fides of Police sent to police officer for report—Legality—Reason

Although it may be undesirable to send a complaint in which the bona fides of the Police are impugned to a police officer for enquiry and report, it is not illegal to do so. Before therefore this would be a ground for

he words of order was in

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of Magis

state under—issuing of inquiry—superior proce

to whom a complaint is made

to the truth of the allegations

complaint as supported by the

of the complainant he ought

to record an order to that effect in the order

sheet so that the superior Courts may be satis

fied that the Magistrate has justification for re

fusing to issue summons to the accused as re

quired by law. He can also, after giving proper

and adequate reasons either summarily

inquire into the truth of the complaint himself

or call for an inquiry and report as provided by

S 204 Cr P Code. If the Magistrate has no

ground for disbelieving the truth of the com

plaint, it is his bounden duty to issue summonses

to the accused and then to pass an order of

quittal if he is not satisfied after due inquiry

the truth of prosecution case presented at the

trial (Mazhar Lall J.) MUKTI NARAIN J.

EMPOROR 186 IC 627=41 Cr L.J. 349=

12 R.P. 534=6 B.R. 377=

1939 P.W.N. 871=20 P.L.T. 947=

AIR 1940 Pat 97

S 202—Powers of Magistrate—Complaint against several persons—Process if can be issued against

others

that if a complaint is made jointly the Magistrate has no

processes against some and post

poned on processes against the others. The fact

that he had issued processes against some of the accused

would not deprive him of his power to make a prelimi

nary enquiry in respect of the offence alleged against

others under S 202 Cr P Code (Nisogi

185 IC 224=12 E.A. 309=41 Cr L.J. 137

S 197 and Police Act (1861), S 7—Sanction of Provincial Government—If necessary for prosecution of a sub-inspector of police

CR. P. CODE (1898), S. 202

of complaint to accused for report as to truth or falsity of case before issue of summons—*Legality*.

It is not only irregular but illegal for a Magistrate to whom a complaint is made to the person accused for a report as to the truth or falsity of the charge preferred against him before issuing summons to him. A Magistrate would be going out of his way to exonerate an accused person before calling upon the complainant to substantiate his allegations.

*Lall, J.* MUKTI NARAIN v. EMPEROR.  
186 I.C. 627=41 Cr.L.J. 349=12 R.P. 534=  
6 B.R. 377=1939 P.W.N. 871=20 P.L.T. 947=  
A.I.R. 1940 Pat. 97.

—Ss 202 and 192—Transfer of Magistrate after calling for police report.  
Col. 421 SANTOKH RAJ SINGH v.  
188 I.C. 595=12 R.L. 423=

—S 203—Dismissal of complaint—Fresh complaint—When may be entertained.

The District Magistrate who was also a Deputy Commissioner dealt with the original complaint in an unsatisfactory manner in dismissing it under S. 203 by passing an executive instead of a magisterial order and thereby did not leave the complaint open to any further proceedings in any other Court. The case however was of considerable importance involving corruption in the administration of justice.

*Held*, that there were exceptional circumstances in

default—Fresh complaint on same facts—Maintenance of complaint.

It is competent for a Magistrate to entertain a second complaint upon a statement of facts which constitute a first complaint which has been dismissed for want of evidence under S. 203, Cr. P. Code, or in which the

CR. P. CODE (1898), S. 210.

report of the enquiry officer under S. 202, Cr. P. Code (Edgley, J.) HAFIZAR RAHAMAN v. AMIL.  
106 I.C. 440 W.N. 1114=72 C.L.J. 104.

205 (1)—Scope and applicability of—Appearance of accused against whom warrants though issued were cancelled—If can be allowed to appear by pleader.

jurisdiction of the Court when certain accused appeared before it, against whom though warrants had been issued they had been subsequently cancelled, to permit them to appear by pleader (*Bennet, J.*)

—S 208—Scope of—Committal—When to be made. See 1939 Dig. Col. 422 JASHANMAL v. EMPEROR.  
I.L.R. (1940) Kar. 85

—Ss 209 and 342—Scope and object of—Duty of Magistrate—Questions to accused—Purpose of—Filing of written statement in answer to questions—Propriety of—Admissibility of such statement in evidence at trial. See CR. P. CODE, S. 287.

1940 M.W.N. 1163  
—Ss 210 to 216—Procedure—Duty of Magistrate as to accused's list of witnesses—Simultaneous framing of charge and order of commitment—Accused failing to answer as required by Magistrate at once—Application in Sessions Court a few days—Sessions Judge holding application not requiring accused to deposit expenses—

Rejection of application on failure of accused to pay—Propriety

Where a charge has been framed under S. 210, Cr. P. Code, and the accused has been committed to the Sessions Court at once, the Sessions Judge is not bound to allow the accused to appear by pleader.

based on evidence.

It is not necessary that the opinion of a Magistrate in a case to summon at least some of the witness cited by the accused regarding the effect of whose testimony some

## CR. P. CODE (1898), S 215.

of the prosecution case. Further where the Magistrate simultaneously frames the charge and passes the order of commitment and at once calls on the accused to file his list of witnesses, he departs from the order of procedure laid down in S 210, Cr. P. Code, and the following sections. Though it is not obligatory on the Magistrate to examine defence witnesses with a view to reconsidering the necessity for charge and for a commitment, it is undoubtedly his duty to see to the obtaining of the list of defence witnesses. If the accused is not

## GOVERNING.

The High Court will not quash a commitment unless it is shown that the commitment was bad on a point of law. It will not quash commitments where there is *prima facie* case against the persons who have been committed to take their trial to a Court of Session. In such a case no legal question arises and so the Court has no power to quash the commitment. (*Rachand Singh, J.*) EMPEROR v. MIHIL LAL I.L.R. (1910) All 531-190 I.C. 238-41 Cr. L.J. 869-13 R.A. 185-1910 A.C. 90-1910 A.W.R. (H.C.) 338-1910 A.L.J. 357-A.I.R. 1910 All 398

—Ss 222 and 231—Criminal breach of trust—Three separate charges in respect of three gross sums, each made up of separate items—Joinder of—Legality

Three separate charges of criminal breach of trust in respect of three gross sums each made up of separate items can be legally tried together provided the offences in respect of all the three gross sums are been committed within a space of (*Bartley and Khundkar, JJ.*) MUKHERJEE v. EMPEROR

—S 225—Scope—Charge in form S. 233—If vitates trial

Lumping of three cases of cheating in

187 I.C. 862-A.I.R. 1910 Pat 603

—Ss 231 and 291—Scope—Alteration or addition to charge during trial—Right of accused to examine further witnesses—Omission to request Court to summon witnesses—Effect of

Where amendments or alterations to the charge are made after the commencement of a Sessions trial the prosecutor and the accused have the right, under S 291 read with S 231, Cr. P. Code, not only to recall and re-examine any witnesses who may have been examined, but also to call any further witness whom the Court may think to be material. A request to summon a fresh witness under S. 231 can only be refused if the evidence of the witness is no Court to be material where the accused request to the Court and express no any witness, he cannot afterwards complain that the trial was bad or irregular, and it cannot be held that any prejudice is caused to the accused by any failure to follow

## CR. P. CODE (1898), S 235

the correct procedure. (*Roland and Chatterji, JJ.*) MUSHARU v. EMPEROR 19 Pat 413-190 I.C. 617-7 B.R. 67-13 R.P. 230-41 Cr. L.J. 931-21 Pat L.T. 13-1910 P.W.N. 83-A.I.R. 1910 Pat. 355.

—Ss 232 and 355—Conviction for offence for which no charge was framed—Accused misled in defence—Order of acquittal by appellate Court—Legality

If an accused person was convicted for an offence against him and he was, the appellate Court had upon a charge proved by acquittal by it is bad in (*leg, JJ.*) SURAJMULL v. 44 C.W.N. 400 separate charges under Ss.

—Legality 452, 323 and 379, I.P.

offences as required by S 233, Cr. P. Code, but the alleged charges were specifically and separately mentioned, the charge sheet does not contravene the provisions of S 233 (*Zia ul Hasan, J.*) MADHO SINGH v. EMPEROR 189 I.C. 258-13 R.O. 92-1910 A.C. 98-1910 A.W.R. (C.O.) 253-1910 O.W.N. 607 & 927-1910 O.L.R. 420-41 Cr. L.J. 725-1910 O.A. 483-A.I.R. 1910 Oudh 396.

—Ss 233, 236, 237 and 423—Conviction for offence not charged—Validity—Powers of appellate Court See 1939 Dig. Col 424 NAND KISHORE v. EMPEROR 185 I.C. 151-12 R.A. 304-41 Cr. L.J. 111.

—S 233—Scope of joinder of charges in respect of three offences under S 479 I.P. Code and three offences under S 477 A. I. P. Code—Legality

S 233, Cr. P. Code requires that for every distinct trial Nor can two alternative charges under S. 411, I.P. Code, in respect of the properties stolen from the two houses be tried together (*Pandurang Row and Horwill, JJ.*) EMPEROR v. BOYA LINGAU 188 I.C. 381-41 Cr. L.J. 581-13 E.M. 23-1910 M.W.N. 239-51 L.W. 321-A.I.R. 1910 Mad 509.

233 and 235—Two distinct offences of theft separate houses—Two alternative charges of stolen property concerned in the two thefts—rial—Legality

distinct offences of theft in two separate houses joined together and tried at one and the same trial Nor can two alternative charges under S. 411, I.P. Code, in respect of the properties stolen from the two houses be tried together (*Pandurang Row and Horwill, JJ.*) EMPEROR v. BOYA LINGAU 188 I.C. 381-41 Cr. L.J. 581-13 E.M. 23-1910 M.W.N. 239-51 L.W. 321-A.I.R. 1910 Mad 509.

—Ss 234 and 222—Criminal breach of trust—Three separate charges in respect of three gross sums, each made up of separate items—Joinder of—Legality. See CR. P. CODE, Ss 222 and 234 44 C.W.N. 176.

—S 235—Accused setting fire to his shop to obtain money from the insurance company by fraud, had to that end set fire to his shop and after the fire had put in a claim for the money.

prosecution was that the mind to obtain insurance money from the insurance company by fraud, had to that end set fire to his shop and after the fire had put in a claim for the money.

## CR P CODE (1898), S 235

*Held*, that in the circumstances it was not possible to say that the attempt to cheat was not essentially connected with the arson and that, therefore, the framing of the two charges under Ss 420/511 and S 436 I P Code, did not amount to a misjoinder (*Partley and Akhundkar JJ*) AHMADAR FAHAMAN v EMPEROR 44 O W N 340

—S 235 and Penal Code Ss 124 A and 153 A  
—Separate trials in respect of same speech for different offences—Necessity—Legality

Where in respect of the same speech a person is charged with two offences under Ss 124 A and 153 A I P Code, there should not be two separate trials and the accused could be convicted under both the sections

—S 235—Joinder of charges—Offence of and offence under S 6 Merchandise Marks Act

Where the offence under S 6, Merchandise Act was not committed in the course of the same transaction as the offence of cheating a joinder charges amounts to misjoinder of charges

J) A K SEN v MADHU MANGAL A I R 1940 Cal 583  
—S 235 (1)—Same transaction—User of four forged documents at registration of a sale deed and obtaining money—Single trial for four charges—Legality

The appellant was charged with four offences under S 471, I P Code on the ground that he used four forged documents during the registration of a sale deed knowing them to be forged and so the complainant

*Held*, that the user of the documents formed one transaction therefore be tried for all the offence  
S 235 (1) Cr P Code (*Lu*)  
SUBBA RAO v EMPEROR

—S 235—Alternative charges under Ss 302 and 201—Propriety—Accused not free from suspicion of being guilty of main offence—Conviction under S 201 I P Code—Legality

A person who has actually committed a crime himself—whether murder or any other crime—is not any the less guilty of removing traces thereof if it is proved against

tion under S 201, I P Code (*Reinland and Chatterjee JJ*) NEETI MANDAL v EMPEROR

—Charge of perjury in the alternative—

Quere—Whether a statement made under S 164, Cr P Code, can possibly part of the same transaction as a statement trial so as to justify an alternative charge

## CR P CODE (1898), S 239

under S 236 Cr P Code (*Beaumont CJ and Dinatla, J*) EMPEROR v SULTANSHA SIDISHA

42 Bom L R 745—A I R 1940 Bom 385  
—Ss 235 and 237—Scope of—Charge under S 295 I P Code—Conviction under S 297 on same facts—Legality—Absence of charge under S 295—Effect

Ss 236 and 237, Cr P Code, authorise the Court where it is doubtful which of several offences has been committed, to frame charges in the alternative, and, even in the absence of alternative charges, to convict the accused of the offence which he is shown to have committed

I P Code, can be convicted under S 297, on the facts, when they disclose an offence under

Where the only charge against an accused person is one under S 304 read with S 149 I P Code, he can not be convicted under S 326, read with S 34 I P Code, when no such charge has been framed against him (*Henderson and Khundkar, JJ*) KALAI BEPARI v EMPEROR 44 O W N 651

—S 238—Counterfeiting coins—Charge for substantive offence—Conviction for abetment—Legality,

—S 239—Applicability—Requisites

For S 239 Cr P Code to apply it is enough if the different offences are committed in the course of the same transaction. The criterion which makes a joint trial allowable is what the prosecution case is and not what the result may be (*Gruer, J*) BHAGOLELAL t

189 I C 382—41 Cr L J 73—  
13 R N 47—1940 N L J 309—  
A I R 1940 Nag 249

the same person at about the same time and place, and both these accused are being prosecuted because there is a common transaction in which each of them is concerned. Hence, if one of them is convicted, and if of the accused will be other set of evidence will have to be considered

## CR P CODE (1898) S 239

clear from the words of the clause 'committed in the course of the same transaction'. When the prosecution evidence against two persons is mutually exclusive, there is no provision of the Code under which those persons can be tried together, and the joint trial of two persons is not a mere irregularity which can be set aside under S 537 of the Code it is an illegality which is the very root of the trial. (*Dantley and Wiles v. MAUNG SAR KEE & THE KING*)

1940 Rang J

—Ss 239 and 537—Same offence—Mutual exclusivity—Two persons charged with same offence of murder—Evidence against them mutually exclusive—Legality of their joint trial. See 1939 Dig., Col 425 NCA SAR KEE & THE KING 185 IC 303=12 ER 189=41 Cr LJ 153

—S 239—"Same transaction"—Meaning of—Joint trial in respect of large number of counts—Profruity

When there is sudden clash between two hostile communities which is not the result of any previously concerted action on the part of the accused persons, and a number of attacks and events take place in various

another to say that. (*Pandrang Row, J*)

—S 239—Same offence—Use of force—Legality—Same point of time. See 1939 Dig., Col 425 PROVINCIAL GOVERNMENT C P AND BERAR v DINANATH 41 Cr LJ 27

—S 239 (c)—Scope—Offences of same kind—Joint trial—Legality

Where the same persons with the same object and under more or less similar circumstances commit the same offence punishable under the same section of the Penal Code though on different but near dates the offences are of the same kind and a joint trial is permitted under S 239 (c) Cr P Code (*Lakshmana Rao, J*) KANDAN v EMPEROR

—S 239 (d)—Joinder of charges and 311 with charges under S 330, justified—Sameness of transaction—time

A joinder of charges under Ss 302 and 311 with charges under S 330 I P Code, is justified where the offences were committed in the course of the same transaction. The relevant point of time at which the condition as to sameness must be fulfilled is the time of the eventual result. (*Gruer*)

Where a person charged under S 302 with having in his possession goods with the counterfeit mark and another person charged under S 330 with having in his possession the counterfeit mark are charged and tried jointly

## CR P CODE (1898), S 247

evidence to connect the goods found in the possession of accused 1, with the counterfeit die found in the possession of accused 2, the misjoinder renders the trial

A joint trial of a person charged with theft under S 379, I P Code, with others charged under S 147 I P Code, with having rescued him is illegal. The theft and the subsequent rescue cannot be said to be acts committed in the course of the same transaction.

places and on different occasions—Joint trial—Legality

The words 'same transaction' in S 239 (d)

different parts of the same transaction

Meredith J) NATHU CHOWDHURY v EMPEROR 6 BB 481=187 IC 361=12 RP 615=41 Cr LJ 452=1940 P W N 454=AIR 1940 Pat 499

—S 244—Discretion of Magistrate. See 1939 Dig., Col 426 VIDYA PARKASH v EMPEROR 186 IC 575=12 RL 422=41 Cr LJ 340=AIR 1940 Lah 58

—Ss 247 and 259—Applicability—Charge of summons case and charge of warrant case arising from same transaction—Trial of both as warrant cases—Absence of complainant—Discharge of accused—Effect of—If bar

Magistrate to try them together but if he does so he must follow the procedure laid down for warrant cases, and he cannot whilst proceeding with the two cases together, treat them separately. Where in such a case

complaint on the same facts is respect of both offences. If, tried as a summons case, the complainant is not present, the case is dismissed. (*Cr*)

NJI



CR. P. CODE (1898), S 235

CR. P. CODE (1898), S. 239

under S. 236, Cr. P. Code. (*Beaumont, C.J.* and  
under S. 236, Cr. P. Code. (*Beaumont, C.J.* and

44 O.W.N. 340

—S. 235 and Penal Code Ss 124 A and 153 A  
—*Separate trials in respect of same speech for different offences—Necessity—Legality.*

Where in respect of the same speech a person is charged with two offences under Ss 124 A and 153 A, I P. Code, there should not be two separate trials and the accused could be convicted under both the sections in one trial. But where there has been separate trials

Effect

Ss 236 and 237, Cr. P. Code, authorise the Court where it is doubtful which of several offences has been committed, to frame charges in the alternative, and even in the absence of alternative charges, to convict the accused of the offence which he is shown to have committed though he was not charged with it, provided the charges are framed in the alternative.

—S 235—*Joinder of charges—Offence of cheating and offence under S 6, Merchandise Marks Act*

Where the offence under S 6, Merchandise Marks Act, was not committed in the course of the same transaction as the offence of cheating, a joinder of these charges amounts to misjoinder of charges (*Edgley, J.*) A. K. SEN; MADHU MANGAL

A.I.R. 1940 Cal 583

—S 235 (1)—*Same transaction—User of four forged documents at registration of a sale deed and obtaining money—Single trial for four charges—Legality*

The appellant was charged with four offences under S 471, I P. Code on the ground that he used four forged documents during the registration of a sale deed knowing them to be forged and to the complainant.

*Held*, that the user of the documents and the money formed one transaction and therefore he should be tried for all the offences under S 235 (1), Cr. P. Code. (L. SUBBA RAO v. EMPEROR.

—S 236—*Alternative charges under Ss 302 and 301—Perjury—Accused not free from suspicion of*

proved will constitute. An accused charged under 295, I P. Code, can be convicted under S. 297, on the same facts, when they disclose an offence under 297, though he was not charged under the latter section. (*Dhale, J.*) AMIR HASSAN v. EMPEROR

189 I.C. 867=13 R.P. 174=6 B.B. 874=41 Cr. L.J. 810=21 Pat. L.T. 121=1910 P.W.N. 145=A.I.R. 1910 Pat. 414

—Ss 237 and 238—*Charge under S. 304/149, I. P. Code—Conviction under S. 326/34, I. P. Code—Legality.*

Where the only charge against an accused person is one under S. 304 read with S. 149, I P. Code, he cannot be convicted under S. 326, read with S. 34, I P. Code, when no such charge has been framed against him. (*Henderson and Khundkar, J.*) KALAI BEPARI v. EMPEROR. 44 O.W.N. 651

—S 238—*Counterfeiting coin—Charge for substantive offence—Conviction for abetment—Legality.*

—S. 239—*Applicability—Requisites.*

enough if the course of the takes a joint is, and not COLELAL v. Cr. L.J. 734= Cr. L.J. 309= 10 Nag 249

"usually exclu-

part of the same transaction as a statement made at the trial so as to justify an alternative charge of perjury | Cr. P. Code, means an offence arising out of the same act or series of acts and can mean nothing else as is

## CR P CODE (1893) S 232

clear from the words of the charge committed in the course of the same transaction. When the prosecution evidence against two persons is mutually exclusive, there is no provision of the Code under which those persons can be tried together, and the joint trial of the two persons is not a mere irregularity which can be cured under S 537 of the Code it is an irregularity which goes to the very root of the trial. (*Dantley and Wright JJ*)  
**MAUNG SAR KEE v THE KING**

1910 Rang L.R. 203

—Ss 232 and 537—Same offence—Meaning of—Two persons charged with same offence of murder—Evidence against them mutually exclusive—Legality of their joint trial. See 1910 D.G. Col 425. **NCA SAR KEE v THE KING** 185 L.C. 303—12 B.R. 189—41 Cr.L.J. 153

—S 232—Same transaction—Meaning of—Joint trial in respect of large number of counts—Propriety

When there is sudden clash between two hostile communities which is not the result of any previously concerted action on the part of the accused persons, and a number of attacks and events take place in various parts of the village at different times of the day there is no justification for regarding all the events that take place as parts of the same transaction and it is not right to hold a joint trial in respect of all the occurrences. A joint trial in respect of a e.g., hurt, mischief, house armed with deadly weapon be deprecated even though

—S 232—Same offence and use of force—Legal trial—Same point of time. See 1 **CIAL GOVERNMENT C**

—S 232(c)—Scope—Offences of same kind—Joint trial—Legality

Where the same persons with the same object and under more or less similar circumstances commit the same offence punishable under the same section of the Penal Code though on different but near dates the offences are of the same kind permitted under S 232(c) Cr P. **KANDAN v EMPEKUN**

—S 232(d)—Joinder of charges—Same transaction—Same point of time

A joinder of charges under S 232 I.P. Code offences were committed in the same transaction. The relevant point of time

## CR P CODE (1893) S 247

evidence to connect the goods found in the possession of accused 1 with the counterfeit coin found in the possession of accused 2, the misdirection renders the trial invalid being a disregard of an express provision of law

—S 232(d)—Person charged with theft—Joint trial—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

A joint trial of a person charged with theft under S 39 I.P. Code, with others charged under S 147 I.P. Code with having received him is illegal. The theft and the subsequent receipt cannot be said to be acts committed in the course of the same transaction. (*Ahmed and Fajley JJ*) **ANANT v EMPEKUN** 41 Cr.L.J. 153

—S 232(d)—Same transaction—Meaning of—Joint trial in respect of large number of counts—Propriety

The words "same transaction" in S 232(d) suggest in particular continuity of a transaction and purpose. The question of joinder or not joinder depends on the form of the accusation made rather than on the facts actually proved at the trial. The nature of the charge

—S 247—Joinder of charges—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

—S 247 and 248—Applicability—Same transaction—Same point of time—Meaning of—Joint trial in respect of large number of counts—Propriety

## CR P CODE (1898) S 247

—S 247—Scope and object—'Hearing', meaning of

The principle underlying S 247, Cr P Code is to be that from the first day on which for appearance of the accused and at adjourned hearings of the case during has to take some step or other in the progress of the

trate has taken cognizance of a case upon a complaint preferred to him by the person who seeks to withdraw the complaint. Where an application for withdrawal is made by a person who is not a complainant the Magistrate cannot grant permission to withdraw the complaint (*Davis, J C*).

ARZ MAHOMET  
188 IC

## —S. 248—

against some a  
against all

There is nothing in S 248 Cr P Code, which involves a withdrawal of the whole complaint merely because the complaint is withdrawn against some only of several accused (*L*).

GENERAL ASSURA  
LIFE INSURANCE  
187 IC 22

## —Ss 250 and

sional Court—If can direct compensation to be paid on acquittal—Such order if incidental to order of acquittal

S 250 Cr P Code provides for the award of compensation by the Magistrate by whom the case is heard and to that Magistrate is expressly reserved the power to award compensation under S 250. S 423 does not invest the appellate Court with authority to make any order which might have been made by the Court below. Ifence an order under S 250 could not be passed by an appellate or revisional Court when setting aside a conviction and acquitting an accused and such an order cannot be an order incidental to the order of acquittal under S 423 (1) (d) of the Code (*Shirpe, J*). THE

Police Officer

S 250 Cr P Code

188 IC 22

188 IC 22

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188 IC 22

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## CR P CODE (1898) S 253

Where a complainant has to pay compensation to imprisonment which the of payment should be payment of each of the PU v MAUNG TUN PE 101 A U 744-41 Cr L J 506=12 R R 351= AIR 1910 Rang 110

—Complainant—Meaning of  
P Code, does not appear susceptible of a logical application to all false and frivolous cases. It will not apply, for instance, to the formal remedy and does not be a long in-rtain who is the (*Davis, J C*) IASHIM v EM 1=13 R R 47= 1 Cr L J 788= AIR 1910 Sind 134 (F.B)

## —S 250—Conditions necessary for awarding compensation

It is only when the Magistrate is of opinion that the accusation against the accused was not only false but that he can act under is that this section is which are frivolous or be applied in serious under the provisions of is reason that a Magis- frivolous or vexatious

before he has jurisdiction to deal with the matter under S 250 (*Mukney J*) MA PU v MAUNG TUN PE 187 IC 744-41 Cr L J 506=12 R R 351= AIR 1910 Rang 110

t—Firding as to—

require a categorical but that the Magis- re accusation is false RAM 42 PLR 678

—S 250—Jurisdiction—Discharge or acquittal—Notice to complainant to show cause against order of compensation—Subsequent retirement of Magistrate—Jurisdiction of successor to continue proceedings See 1939 Dig., Col 427 EMPEROR v MAHOMED ALAN ILR (1940) Kar 119=41 Cr L J 53

—S 252—Applicability—Case started on police challan

S 252 like the other sections in Chap. 21 Cr P Code, applies to warrant cases generally and so would apply to a case started on police challan (*Grner J*) HANSRAJ v EMPEROR 1940 N L J 449= AIR 1910 Nag 390

—Powers under—If can be exercised

to the Magistrate under S 252 (2), Code may be exercised from time to time as the requires (*Grner J*) HANSRAJ v EM 1940 N L J 449=AIR 1910 Nag 390 53 (2)—Discharge of accused without examination of complainant—Power of Magistrate See 1939 127 SHIV DATTA v B K SONP 6 IC 635=41 Cr L J 354=12 R L 427= AIR 1940 Lab 40

253 (2)—Prosecution under S 406, I P er of discharge after examining only few of witnesses—Propriety See 1939 Dig., Col CHAN ELLIAM v L H WELLINGTON 41 Cr L J 25

188 IC 22

188 IC 22

188 IC 22

188 IC 22

## CR. P. CODE (1898), S. 256.

—S. 256—'Any remaining witnesses'—Meaning.

If witnesses have been accepted  
petent for the prosecution at any stage  
for further examination under S. 256  
that stage is after charge, they  
of 'any remaining witnesses'  
EMPEROR 1910 N L J 449—

—S. 256—Defence to  
produce—Duty of Magistrate

prosecution can in no way excuse the Magistrate  
not asking them when they are subsequently exam-  
ined under S. 342, whether they desire to call witnesses or not.

—Ss. 256 and 257—Order for

evidence has been exhausted and the further cross-  
examination of the prosec-  
The Court therefore acts  
cross-examination of the  
production of the defence.  
The Court should fix a date  
of the prosecution wit-  
or waived it should give an  
the production of his def-  
consequently bound to send  
the accused under S. 257,  
strike out the defence of it  
accused had not asked it to  
the day on which the accused had to further cross-  
ex-

DAVAL TRIPATHI v. EMPEROR, 1901 O L R 887—  
1940 A Cr O 136—1940 O L R 648—  
1940 O

—S. 259—Applic-  
case and warrant case ar-  
Procedure—Trial as wa-  
plainant—Discharge of  
complaint—If barred.  
259.

—S. 259—Discharge  
complaint—If barred. S.  
259.]

—S. 260—Trial o-  
mary procedure—Proper  
M A KHAN v. EMPEROR

Y. D. 1940—31

## CR. P. CODE (1898), S. 274.

—S. 262 (2)—Limit contemplated by—If applies

er illegal a  
ment of fine  
sentence of imprison-

term allowed by that  
262 (2) of the Cr. P.  
sentence of imprison-

appealable summary trial—Duty of Magistrate to sign  
memorandum of evidence—Failure to sign—If violates  
trial and conviction

Omission to enter particulars in form—Effect on conviction

—S. 263 (h)—Judgment in summary trials—

—S. 263 (h) (i)—Summary trial—Judgment—  
Reasons for sentence, if should be given  
In a summary trial, S. 263 (h) and (i), Cr. P. Code,

CR P CODE (1898), S 275

CR P CODE (1898), S 283

1939 Dig, Col 431.

41 Cr L.J. 28.

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 —Object of—Evidence in-  
 —Answers elicited by  
 "duly" recorded—Admissi-

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—S 276—Judicial Commissioner's Court—If a  
 Court of Session See 1939 Dig, Col 429 SHEWA  
 RAM JETHANAND v EMPEROR. 41 Cr.L.J. 28=  
 I.L.R. (1940) Kar 249

—Ss 276, Proviso 2 an  
 scope—List of persons summo  
 exhausted by lot and challen  
 filling up See 1939 Dig,  
 JETHANAND v EMPEROR.

—S 276, Provisos 3 an  
 of See 1939 Dig Col 430  
 v EMPEROR

ment—If one duly recorded —Admissibility—Ss 209  
 and 342.

Under Ss 209 and 342 of the Cr P Code, the Court  
 is entitled to put questions to the accused for the purpose

to juror on ground of partials

If the Court decides that no presumed or actual parti-  
 cularity in the juror has been made out, the decision is  
 absolutely final and cannot be challenged in appeal by  
 virtue of S 279 (1) Cr. P Code If, however, a Court  
 were to find that some presumed or actual partiality in

—S 288—Admission of approver's statement in  
 commuting Court—Different statement in Court of  
 Session—Powers of Sessions Judge—Reliance on earlier  
 statement See 1939 Dig Col 431 EMPEROR v

## CR. P CODE (1898), S 288

Evidence  
Magistrate  
S 288, C  
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be used  
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evidence in  
corroborat  
MANDAL

1940 PWN 73-A.I.R. 1940 Pat 289

—S 288—Evidence given by witnesses before committing Magistrate—Use of as substantive evidence in

of See BHOPAL CR P CODE Ss 232 A

—S 288—Retracted statements—basis of conviction

No conviction can be based on the of the prosecution witnesses if they without any exception reside from their statements made before the Committing Magistrate, and there is no other independent evidence, direct or circumstantial on the record (*Addison, Ag C J and Din Mohammad, J*) **FAZAL v EMPEROR**

41 P.L.R. 862

## CR P CODE (1898), S 297

jury at the end of each  
een falsely implicated  
y to misguide the jury  
satisfied that the case  
used guilty The issue  
the accused are being  
the prosecution has

Common intention specified in charge as being to assault and not to kill—Omission of Judge to frame alternative charges under S 304 326 or 325 or to explain Ss 34 39, Indian Penal Code—Omission to place of each accused separately—Misdirection—on trial  
rial on a charge under Ss 147 and 148 and I P Code where the common object specified in

that it is open to them to convict for one or other of these lesser offences He should tell the jury clearly that even if they believed that the accused had jointly killed the deceased still it would be open to them to convict not under S 302 but merely under S 304 or even under S 326 or S 325, if they considered that the necessary intention or know

Court to the Sessions Court—Value to be attached—Corroboration—Necessity

Where under the provisions of S 288 Cr P Code the evidence of the prosecution witnesses taken in committing Court is transferred to the Sessions Court it is on the same footing with all other evidence in the case for all purposes and the corroboration otherwise is

individual accused separately it must be held that these are serious misdirections and non-directions which have possibly prejudiced the accused and the verdict cannot be upheld The jury might be misled into thinking that it is their duty to convict all the accused under S 302 or to acquit all Such misdirection and

—Ss 294 and 309—One of assessors must give his opinion on personal knowledge—De novo trial—If necessary See 1939 D.G. Col 432 **EMPEROR v PAHLU**

41 Cr.L.J. 55

—S 297—Defective charge—Summarising evidence against each accused and asking jury if he is falsely implicated

It is a wrong method of approach in a criminal case for a Judge to summarise the evidence against each of

In a trial under Ss 363 366 and 367 A.I.P. Code the Judge should point out to the jury the facts on which the verdict is based and the evidence on which the prosecution is based (*Henderson and Khudkar JJ*) **FAZAL EMPEROR**

—S 297—Evidence—Case of misleading statement—Absence of emphasis

CR P CODE (1898), S. 297

CR P CODE (1898), S. 298

accused are entitled to be acquitted even if the circum

—Ss 297 and 298—*Misdirection—Omission to act of parts*

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ticular count  
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EYYA v EM  
M W N 87  
e to be read  
L BERTRAM  
Or L J. 72

Dig. Col 43. SHEWARAM JELIHANAND v EMPEROR  
I L R (1940) Kar 249=41 Or L J 28

—S 297—*Misdirection—Charge of cheating—Omission to explain necessary ingredients*

—Ss 297 and 298—*Non direction—Charge of sexual offence—Duty of Judge to warn jury of danger of conviction on uncorroborated evidence of girl—Failure to draw attention of jury to improbability of abduction*

—S 297—*Misdirection—Evidence of approver not corroborated in material particulars—Jury not told that such testimony must be corroborated—Conviction*

approver

failure to refer to all the suggestions made by the defence would not amount to non direction S 298 (2) permits the Judge to indicate his estimate of the evidence. The principal test to be applied to a charge is whether or not the Judge directed the attention of the

corroborated, a conviction founded on such rated testimony cannot be sustained even if the verdict of the jury is unanimous (Lakshminarayana Rao v KESAVA REDDI *supra*)

52 L W 492 (1)=(1940)

—Ss 297 and 298—*Misdirection—Omission to explain relevant evidence of accused—Omission to explain relevant evidence of accused—Omission to explain relevant evidence of accused*

An improper exclusion of relevant evidence attempted to be let in on behalf of the accused and the failure on the part of Judge to lay stress on the fact that all the prosecution witnesses were interested would amount to misdirection. So also failure to put before the jury points which are favourable to the accused is a misdirection

—S 298—*Offence of abduction—Uncorroborated*

is all the direction he gave to the jury upon the important question whether the woman's evidence ought to be accepted without corroboration, whether there was corroboration, what kind of corroboration it was and whether it was, as is necessary, corroboration with regard to the offence itself and which implicates the accused

CR. P. CODE (1898), S 298.

*Held*, that the conviction could not be allowed to stand. (*Derhykure, C. J. and Lord Williams, J.*)  
TASER PRAMANIK v. EMPEROR. 190 IC 150—  
41 Cr. L.J. 841—13 B.C. 133—71 C.L.J. 590—  
44 O.W.N. 835—A.I.R. 1940 Cal 301.  
—S 238—*Offence of rape—Uncorroborated evidence of prosecutrix—Proper direction to jury—Prosecutrix, if an accomplice*

*Per Bartley, J.*—In a case of rape, the accused is warned that it is unsafe to convict on the uncorroborated testimony of a prosecutrix, but that if satisfied that she was telling the truth, there is no presumption of law which differentiates the evidence of the complainant in a rape case from that of the complainant in the case of any other offence. There can be no assumption, in the absence of evidence, that she is an accomplice.

*Per Sen J.*—It cannot be laid down that in every case of rape the Judge must direct the jury that they should not convict the accused on the testimony of the prosecutrix unless it is corroborated in material particulars to the same extent as is required in the case of an accomplice's evidence. Even if it be the English rule or practice that every prosecutrix in a rape case is to be treated as if she were an accomplice, it is to import it without qualification in Indian law. The manners, customs and mode of life of women in India are different from those of women in England. (*Bartley and Sen, J.J.*) HARENDRA PRASAD BAGCHI v. EMPEROR, I.L.R. (1940) 2 Cal 180—191 IC 48—44 O.W.N. 830—A.I.R. 1940 Cal 461

—S 307—*Consideration of submitted case—If final on all questions of fact—Verdict of jury.*

12 B.N. 201—186 IC 400—  
A.I.R. 1940 Nag 17 (F.B.)

—S 307—*Consideration of submitted case—Jury's*

do so when the verdict is not perverse but it has no power to do so. (*J.J.*)

CR. P. CODE (1898), S 307.

—S. 307 and 423 (2)—*Consideration of submitted case—What the Court does—S. 423 (2) if comes into play.*

(*Per Stone, C.J. and Grille, J.*)—The Court to which the case is submitted is not hearing an appeal though it has powers of an appellate Court. There is nothing to appeal from. There has been no judgment passed. There has been no verdict accepted. There has been no

the Court, on the acquit or convict reverse any verdict without convict without was to give that

opinion, in its proper form unaltered and unreversed, proper weight, but it can leave an opinion which if accepted would amount to a verdict of acquittal completely untouched and still convict and *vice versa*. As it is not concerned with the alteration or reversal of a verdict (which alteration or reversal is not a necessary step before it can proceed to its conclusion) S. 423 (2) does not come into play.

(*Per Bose, J.*)—The verdict of the jury remains its verdict even when the matter is before the High Court

Sessions Judge and that until then it is only a pious expression of opinion on the part of the jury. (*Stone, C.J., Grille, J.*)  
v. EMPEROR

307—*Reference under—Whole case, if opened*

(*Stone, C.J. and Grille, J.*)—The whole case is the own tion

A.I.R. 1940 Nag. 17 (F.B.).

—S 307 (2)—*Trial where jury acted as jurors*

charges on which the accused has been tried by jury. (*Collier and Braund, J.J.*) EMPEROR v. GANGA RAM. I.L.R. (1940) AIL 365—188 IC 767—41 Cr. L.J. 676—13 B.A. 74—1940 A Cr. C. 55—1940 A.L.J. 155—1940 A.W.B. (H.C.)  
A.I.R. 1940



## CR. P. CODE (1898), S. 307.

—S. 307 (3)—*Scope—Power of High Court to go into evidence.*

The High Court, in a reference under S. 307, Cr. P. Code, is entitled to go into the evidence irrespective of whether there was any misdirection or misunderstanding of the law or not, the powers of the High Court in a reference under S. 307 are not limited by S. 423 (2), Cr. P. Code (*Varma and Meredith, J.J.*)

EMPEROR v DULLU KUER 6 B R 465 =  
187 I C 387 = 12 B P. 613 = 41 Cr L J 457 =  
1910 P W N 1000 P 1000 P 1000 P

## —S. 307 (3)—

*meaning of*

The word 'verdict' conclusion of guilty or not guilty but may embrace other things as well. The sense in which it is used in S. 423 (2) relates to the final decision of the majority and it does not embrace the opinion of the minority. But the word 'opinions' in S. 307 (3) is wider than the word 'verdict' in S. 423 (2), and it includes not only the final decision of the majority [the sense in which it is used in S. 423 (2)] but also the opinion of the minority.

J 289 =  
12 B N 204 = 186 I C  
A I R 1940 Nag. 17

## —S. 337 (2)—

Where an approver after accepting pardon under S. 337 denies all knowledge of facts before the committing Magistrate on account of the threats and influences

## CR. P. CODE (1898), S. 342.

has his duty to perform. (*Weston and Tyabji, J.J.*)

EMPEROR v SHAHDINO DHANIPATRO.  
189 I C. 452 = 13 B S. 30 = 41 Cr L J. 747 =  
A. I. R. 1910 Sind 114.

—S. 337 (2)—*Scope and effect of—Accused—Tender of pardon—Effect of—Duty of prosecution to examine approver in Sessions Court even when he denies all knowledge of facts.*

When an accused after accepting pardon denies all knowledge of facts before the committing Magistrate

and the Magistrate's Court, the pardon is examined in is tendered and for the proceeding the committing Magistrate's Court and in the Sessions Court should the case be committed. Failure of the prosecution to examine the approver in the Sessions Court vitiates the trial. (*Weston and Tyabji, J.J.*)

EMPEROR v SHAHDINO DHANIPATRO. 189 I C 452 = 13 B S 30 =  
41 Cr L J. 747 = A. I. R. 1940 Sind 114.

—S. 339—*Approver in committing Court—Failure of*

approver fails to tender evidence, it is illegal as an accused and procedure is to send him up as a witness to the trial Court, irrespective

of the result of the trial.

J 289 =  
12 B N 204 = 186 I C  
A I R 1940 Nag. 17

## —S. 339—

The present powers of Public a particular

Assistant Public Prosecutor at any stage of the proceedings and there is nothing in the Criminal Procedure Code which requires that when a Public Prosecutor has once appeared in a case all further proceedings must be

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428, Cr. P.

—S. 337 (2)—*Object.*

The Legislature in the interests of justice requires that an approver, where the case is committed, whatever state

ments he may have made as to the facts of the case,

should be examined in the Sessions Court and in the High Court.

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## CR P. CODE (1898) S 342.

Code (*Nayeg, J*) NATHU SINGH v EMPEROR  
1940 N L J 203-186 I O 660-  
12 E N 250-41 Cr L J 356

—S 342—Applicability—Summary trial in summons case—Case under S 22 Cattle Trespass Act

S 342, Cr P Code applies to all trials including summary trials. It applies to a summons case tried summarily just as it applies to a summary trial in a warrant case. The section would therefore apply to a case under S 22 of the Cattle Trespass Act (*Beaumont, C J and Dutt, J*) EMPEROR v KONDIBA BALAJI  
191 I O 80-42 Bom L R 695-  
A I R 1910 Bom 314

—S 342—Duty of Court

The object of an examination under S 342 is for the purpose of enabling the accused to explain circumstan-

... accused and to ask him whether he wished to give any explanation. It is extremely unfair for a Judge to rely upon a circumstance as being incriminating without giving him an opportunity of explaining the circumstance (*Henderson and Sen, J*) EMPEROR v JIT LAL. 189 I O 700-41 Cr L J 783-13 E O 120-  
A I R 1940 Cal 378

—S 342—Examination of accused before charge—If compulsory

Under S 342, Cr P Code, the accused is to be questioned after the witnesses have been examined and before he frames the charge. The examination of the accused before framing charge is, therefore, not compulsory S 254, Cr P Code itself makes it allowable to frame the charge before examining the accused as well as before recording all the evidence (*Grut*) SUKHRAMSINGH 1910 ...

—S 342—Examination of accused—Proper stage—Examination after close of arguments and before judgment—Effect of

Under S 342 Cr P Code, the Court must examine the accused at the end of the case for the prosecution and before he is called upon for his defence. If a Magistrate adjourns a case for arguments the moment the case for the prosecution is concluded and after the

—S 342—Examination of accused—Scope of

S 342, Cr P Code, enjoins upon the Court the duty of placing before the accused the circumstances appearing against him in order that the accused may be given

## CR P. CODE (1898), S 342

Where at the summary trial of the accused for an offence under the Motor Vehicles Act, the accused did not admit his guilt and evidence was adduced to prove the charge and the accused was convicted but the Magistrate omitted to question the accused after the prosecution evidence was completed it was held that the proceedings should be quashed (*Davies*) GANESH v. EMPEROR 1940 A M L J 23

—S 342—Scope—Compliance—Opportunity to accused to explain matters appearing in the evidence—How to be given *See* 1939 Dig, Col 437 KANAKASABAI PILLAI, *In re* 186 I O 704-41 Cr L J 369-12 E M 682-A I R 1940 Mad. 1.

—S 342—Scope—Duty of Judge under—Omission to comply with strict letter—Effect on conviction—S 537.

S 342 Cr P Code, must be observed not only in the unfair to accused

... But every failure to comply strictly with the letter of S 342 would not render the conviction of an accused illegal. S 537, Cr P Code, has to be read in that connection and no omission to comply strictly with S 342 can render a conviction liable to be set aside unless in fact it has occasioned a failure of justice. Where an accused in answer to a general question or even one or two questions gives a reply or replies which show that he is

... accused and attempting to elicit contradictory answers. All that can be laid down is that it is the duty of the Court to be satisfied either by his statements or by his answers to questions or by both that the accused ex-

... opportunity to explain circumstances. Inference may be drawn against him (*It, J*) ANNAMALAI MUDALI v (1940) Mad 514-180 I O 206-41 Cr L J 858-13 E M 395-51 L W 206-1940 M W N 93-A I R 1940 Mad. 372-(1940) 2 M L J 39

—S 342—Scope—Non compliance—Effect—If violates trial—S. 537

It cannot be laid down that every failure to comply with S 342 Cr P Code, necessarily vitiates the trial. If the Court is satisfied that failure to comply with the

Per *Sen, J*—The Court is not entitled to draw any inference against a co-accused from the answer of one accused given in response to questions put to him under the provisions of S 342, Cr P Code (*Khundkar and*

## CR P CODE (1898), S 342

failure to record examination can result in miscarriage of justice (*Almond, J C*) KHAN MOHAMMAD v EMPEROR  
187 I C 769=12 R Pesh 38=

41 Cr L J 531=AIR 1940 Pesh 11

—S 342 (1)—Examination of accused, after examination of Court witness—Necessity. See CR P. CODE, SS 540 AND 542 (1) 1940 O A 596

—S 345—Compromise of  
When takes effect—Magistrate's  
ed—Resilience—Effect

A composition arrived at be compoundable offence is complete as soon as it is made and has the effect of an acquittal in spite of the fact that one of the parties subsequently resiles from the compromise. The compromise has the immediate effect of acquittal so as to deprive the Magistrate of his jurisdiction to try the case and the subsequent withdrawal

—S 345 (2) and

under S 420, I P Code

mission of Court—Effect

Sub S (7) of S 345

offence shall be compou

section. An offence under S 420 I P Code, can only be compounded with the permission of the Court and any arrangement of compromise entered into between the parties before the case came effective. It could not be contended that no permission was necessary in the case of the *Grille J* v EMPEROR

—S 345 (5 A)—Discretion of High Court—Proposal for compromise. See 1939 Dig, Col 438  
CHAND BEPARI

—S 345 (5 A)—Powers of High Court—Aggrieved persons not before it. See 1939 Dig, Col 438  
BAHUR ALI SARDAR v KALA CHAND BEPARI

185 I C 177=12 R C 347 (2)=41 Cr L J 125,

—Ss 347 and 288—Commitment to Sessions in warrant case—Magistrate if required to start proceedings de novo—Statements recorded prior to commitment

as the formalities required by S 342, I P Code are carefully observed. If the Magistrate commits the accused subject to the above safeguards, any statement made in the presence of the accused prior to the recording of the evidence of a witness

I before the  
Young, C J

## CR P. CODE (1898), S 350

—Necessity. See 1939 Dig Col 438 SHTOYANGAL PANDE v EMPEROR AIR 1940 Oudh 15

—S 350—Applicability—Summary trials

S 350, Cr P Code, does not in terms exclude summary trials from its operation. It applies to all enquiries or trials conducted by a Magistrate in which the whole or any part of the evidence has been heard and

350, Cr P Code, to be recorded by his pre

trials (*Gruer, J*)

189 I C 689=

=1940 N L J 321=

AIR 1940 Nag 239

—S 350—De novo trial—Interrogatories previously issued and answered—If should be excluded from evidence

Where interrogatories have been served and answered S 350 is de

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This does not

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EMPEROR

Cr L J 681=

AIR 1940 Pesh 17,

—Ss 350 and 537—Judgment prepared by Magistrate delivered by his successor—Failure to give de novo trial—Irregu

for judgment but before

transferred and was

ned and delivered the

judgment prepared by his predecessor without giving an

ask for a de novo

by S 537, Cr

SINGH v EM

I Cr L J 808=

1940 Lah 289

—S 350—Object and scope of—Trial de novo by successor—Cross examination on commission of witness examined on commission in previous proceedings—Pro

cedure. The purpose of S 350 clearly is to provide that the Magistrate should if the circumstances so require, decide the case only on evidence that he has himself seen and heard. But a demand of this sort cannot apply to the case of a witness who has never been heard by the Court and whose evidence has only been taken upon commission in previous proceedings. The Magistrate has a discretion as to whether he should re-examine the witness or not. In *Young, C J* himself has demanded that the witnesses should be re-examined and reheard. But a demand of this sort cannot apply to the case of a witness who has never been heard by the Court and whose evidence has only been taken upon commission in previous proceedings. The Magistrate has a discretion as to whether he should re-examine the witness or not. In *Young, C J*

ILB (1940) Kar 493=AIR 1940 Sind 193.

—S 350 (1) Proviso and S 357—Abolition of

## CR. P CODE (1898), S 351

the discretion wrongly in refusing to compel the attendance of the witness (*Dass, J C and Weston, J*)  
SUKHRAM DAS v EMPEROR

I.L.R. (1910) Kar 498—A.I.R. 1910 Sind 193

—S 351—Applicability See CR P CODE, Ss 190 191 AND 351—RELATIVE APPLICABILITY

1940 Rang L.R. 676

—S 352—Holding of trial at place other than Court house—Proper procedure to be followed

The case on which he is to be held at a place

recourse to higher authority for redress. It is ordinarily for the trying Magistrate to take the initiative in these matters if he considers that the trial should not be held

whether he considers it desirable to hold a trial in the

—Ss 357 to 360—Recording of questions disallowed—Duty of Magistrate

useful for the Magistrate to note the question and his reasons for disallowing it. But this is entirely a matter

(*Skemp, J*)

—S 360—Admissibility.

The reading over of intended to protect the Where the accused has where the witness himself has admitted that it was read over to him and correctly recorded, no prejudice has been caused to any body and hence, objections to its admissibility in subsequent proceedings are not sustainable (*Niyogi J*) SHEOSHANKER v EMPEROR

188 I.C. 885—41 Cr L.J. 697—13 R.N. 14—1940 N.L.J. 165—A.I.R. 1940 Nag 410

Y. D. 1940—32

## CR. P CODE (1898), S 367.

—S 362—Mode of recording evidence See 1939 Dig. Col 439 GHULAM DASTGIR KHAN v EMPEROR

—Ss 361 and 533—Scope—Confession recorded in English and not in language of accused—Admissibility—Defect—If curable by S 533

The fact that a confession is recorded in English and not in the language of the accused will not render it inadmissible in evidence. When the Magistrate who recorded the confession is able to read the confession

41 Cr.L.J. 533—12 R.P. 674—1939 P.W.N. 915—A.I.R. 1940 Pat 163.

—S 367—Cases of different accused not specific

1940 O.L.R. 420—41 Cr.L.J. 725—1936

41 Cr.L.J. 124—A.I.R. 1940 Sind 113

—Ss 367 and 424—Judgment—Contents—Duty

1939 A.L.J. 1146—A.I.R. 1940 All 80

—S 367—Judgment—Falsity of prosecution—

merely Such on his

conduct of certain witnesses who appeared to support that case for otherwise he cannot arrive at a finding that the documents on which the prosecution rely are false and fabricated. When he has done so the remarks that the conduct of persons doing such a thing is criminal or contemptible follows and is justified on the findings arrive at (*Dalip Singh, J*) KARAMAT ULLAH

## CR P CODE (1898), S 367.

EMPEROR

186 I O 799 = 12 E L 431 =  
41 Cr L J 380 = A I R 1940 Lah 42

—S 367—Scope—Duty of Court as regards each individual accused in cases.

A judgment must conform to the provisions of S 367 which require, *inter alia* that it shall contain the points for determination the decision thereon and the reasons for the decision. These requirements must be fulfilled in respect of each individual accused or suspect separately.

201, I P Code—Doubt as to the offence actually committed by accused—Procedure—Sentence—Penal Code, S 72 See PENAL CODE S 72 1940 P W N 73

—S 367 (5)—Award of lesser penalty—Duty of Court to give proper reasons

The Court while awarding the lesser penalty must give

—Ss 369 and 561 A—A

Power of Court

The Court has no power to amend explanation or otherwise (*Monroe J*) GHAN SHYAM DAS BIRLA v SURAJ BHAN 188 I O 856 =

41 Cr L J 768 =  
42 P L R 153 = A I R 1

—S 369—Applicability—Appella postponing decision to await examination

—Ss 369 and 561 A—F

of High Court See 1938 D g C

2 EMPEROR

—S 369—Summary dis

Finality—Subsequent appeal through counsel—Maintainability See CR P CODE Ss 421 AND 369—JAIL APPEAL 1940 O A 448 = 1940 O W N 520

—S 380—Scope—Proceedings submitted to Sub Divisional Magistrate—Duty of latter—Reference to District Magistrate or High Court

Under S 380, Cr P Code, a Magistrate to whom proceedings are referred is not competent to make a final order. Magistrate under S 435 or to Court under S 438 (*Lakshmi Gowda v EMPEROR* 1

## CR P CODE (1898), S 403

—S 393—Scope—If controls Whipping Act—Age limit See WHIPPING ACT, Ss 3 AND 5

I L R (1940) Kar 477  
—Ss 397 and 35—Sentences of imprisonment in default of fines—If can be concurrent—Separate trials—Penal Code, S 64

S 64, I. P Code, clearly lays down that any sentence of imprisonment in default of payment of fine has to be in excess of any other sentence of imprisonment to

have been sentenced. It is, sentences of imprisonment in concurrent with each other of imprisonment. The Court law to make the various

sentences of imprisonment in default of payment of fines inflicted for different offences in separate trials concurrent with each other (*Tek Chand and Blacker, JJ*) EMPER

—S 401

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401—Order under—Nature explained See

WATESH YESHWANT DESH  
L R (1940) Nag 1 (F B)  
Power of Local Government  
VENKATESH YESHWANT

I L R (1940) Nag 1 (F B).

—S 401—Unconditional remission of sentence—

framed before the proceedings in discharge of the accused an acquittal and the accused ven that order of discharge is 403, Cr. P Code (*Lakshmana WEED ROWTHER v MAHOMED* 52 L W 348

nt dismissed under S. 203—Maintainability.

t is not open to a Magistrate to have a complaint list has been

from the previous complaint (*Lobo, J C*) UMAK AHMAD v EMPEROR 186 I O 95 = 41 Cr L J 248 = 12 R S 191 = A I R 1940 Sind 15

—S 403—Scope—Conviction under S 75 Madras City Police Act—If bars trial under Ss 323 and 352,

CR P. CODE (1898), S 408

—Ss 408, 414, 415-A and 562—*Right of appeal*  
—*Summary trial and conviction—Binding over of*  
*some only under S 562—Right to appeal if affected by*  
*S 414—Sentence on others not appealable—If become*  
*appealable under S 415-A*

Where several persons were tried summarily and convicted but some were bound over under S 562, Cr P

mentioned above but who has been sentenced gets a right of appeal by virtue of S 415-A, not only against his conviction but also against his sentence, even though Ss 413 and 414 would have deprived him of all

—S 413—*Sentence of fine not exceeding Rs 50*  
*Sentence passed by Magistrate invested with first class*  
*powers only after conclusion of evidence but before*  
*sentence—Appeal, if lies*

Where a trial is commenced before a second class

passing of the sentence as, therefore, a fine not exceeding Rs 50 is passed by such a Magistrate, no appeal will lie against it under S 413, Cr P Code, irrespective of any other provision in the previous part of the Code. In such a case the Magistrate can in

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S 414 See CR P CODE Ss 408, 414, 415-A AND  
562 (1940) Bang L.R. 381

—S. 415—*Applicability and construction—Two*  
*or more punishments—Meaning of—Two non appeal*

—S 417—*Appeals against acquittals—Princ*  
*to be adopted in considering*

In cases of appeals against acquittals under S 417, Cr P. Code, as a matter of jurisdiction, the whole case is at

CR P CODE (1898), S 422

of the facts of its own for an opposite view of the facts held by the trial Court, where the latter are, upon the evidence reasonable views even though the Judges in the appellate Court might have preferred a view of their own, if the matter had been 'res integra' (Collister and Braun

—S 418—*Appeal against conviction under Ss 366*  
*and 302, I P Code—Trial by jury for S 366 and with*  
*assessors for S 302—Jury's verdict unanimous—Accus*  
*ed if can attack, in the absence of misdirection facts*  
*about kidnapping in appeal against the charge of murder*  
*—Murder trial—Ambiguity in procedure—Benefit to*

appeal is preferred against convictions  
S 366 was by jury and under S 302, with the jury's verdict is unanimous and the facts relating to the two offences are so connected together, it is open to the accused to challenge every fact on which the conviction under S 302 rests though in an appeal against conviction under S 366 only it is open to him to question the same when a man is on trial for his life the law of procedure should be re-  
(Grille and Bose, JJ) MOUJ-  
1940 N L J 565

421 and 561 A—*Summary dis-*  
*missal of Jail appeal under S 421—Subsequent re-*  
*presented appeal under S 419—Maintainability—High*  
*Court of can review its own judgment*

A re presented appeal under S 419, Cr P Code is not  
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inhe  
561 A,  
confer on it any power to do so  
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1940 O.A. 485—A I R 1940 Oudh 369

—Ss 421 and 369—*Jail appeal—Summary dis-*  
*missal—Effect—Subsequent appeal through counsel—*

is dismissed summarily, as soon  
and dated by the Judges they  
and the order passed by them

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EMPEROR

186 IC 799=12 R L 431=

41 Cr L J 380=A I R 1940 Lah 42

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A judgment must conform to the provisions of S 367 which require, *inter alia*, that it shall contain the points for determination the decision thereon and the reasons for the decision. These requirements must be fulfilled in respect of each individual accused or suspect separately in cases where there are more than one (*Lobo, J C and O Sullivan, J*) **ABDUL KARIM v EMPEROR**

189 IC 226=15 R S 28=41 Cr L J 724=

A I R 1940 Sind 113

—S 367 (3)—Scope—Charge under Ss 302 and

201, I P Code

S 72 See

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## CR P CODE (1898), S 403

—S 393—Scope—If controls Whipping Act—Age limit See WHIPPING ACT, Ss 3 AND 5

I L R (1940) Kar 477

—Ss 397 and 35—Sentences of imprisonment in

default of first—If can be concurrent—Separate trials

—Penal Code, S. 64

S 64, I P Code, clearly lays down that any sentence of imprisonment in default of payment of fine has to be in excess of any other sentence of imprisonment to which the prisoner may have been sentenced. It is, therefore, illegal to make sentences of imprisonment in default of payment of fine concurrent with each other or with a substantive term of imprisonment. The Court has, therefore, no power in law to make the various

in separate trials  
and and Blacker,

—190 IC 765=

## CR P. CODE (1898), S. 408

—Ss 408, 414, 415 A and 562—*Right of appeal*  
—*Summary trial and conviction—Binding over of*  
*some only under S 562—Right to appeal if affected by*  
*S. 414—Sentence on others not appealable—If become*  
*appealable under S 415-A*

Where several persons were tried summarily and convicted but some were bound over under S 562, Cr P Code, S 408 confers on them the right of appeal against their conviction, notwithstanding the fact that they have not yet been sentenced. That right is not taken away by S 414. A person convicted along with those mentioned above but who has been sentenced gets a right of appeal by virtue of S 415-A, not only against his conviction but also against his sentence, even though Ss 413 and 414 would have deprived him of all

—S 413—*Sentence of fine not exceeding Rs 50—*  
*Sentence passed by Magistrate invested with first class*  
*powers only after conclusion of evidence but before*  
*sentence—Appeal, if lies*

Where a trial is commenced before a second class Magistrate and where after the conclusion of the evidence but before the sentence is pronounced by him, he becomes invested with the powers of a first class Magistrate, the Magistrate cannot be regarded as a Magistrate of any other class but the first class at the time of the passing of the sentence. If, therefore, a sentence of fine not exceeding Rs 50 is passed by such a Magistrate, no appeal will lie against it under S 413, Cr P Code, irrespective of any other provision in the previous part of the Code. In such a case the Magistrate can n

and Sen JJ)  
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—S 414—  
over under S  
S 414 See C  
562

—S 415—*Applicability and construction—Two*  
*or more punishments—Meaning of—Two non appeal*

—S 416—*Interpretation*

The two sentences referred to in S 415, Cr P Code, must be of fines above Rs 50 in order to avoid the bar in S 414 (*Gruer, J*). PROVINCIAL GOVERNMENT,  
C P AND BERAR v BHIVRAM 188 I O 80—  
41 Cr LJ 545—12 B N 332—  
1910 N L J 242—A I R 1910 Nag 264

—S 417—*Appeals against acquittal*  
*to be adopted in considering*

In cases of appeals against acquittals under S 417, Cr P Code as a matter of jurisdiction, the whole case is at

## CR P. CODE (1898), S 422

of the facts of its own for an opposite view of the facts held by the trial Court, where the latter are, upon the evidence, reasonable views, even though the Judges in the appellate Court might have preferred a view of their own, if the matter had been '*res integra*' (*Collister and Braun*

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assessors and the jury's verdict is unanimous and the facts relating to the two offences are so connected together, it is open to the accused to challenge every fact on which the conviction under S 302 rests though in an appeal against conviction under S 366 only it would not have been open to him to question the same facts. In a case when a man is on trial for his life every ambiguity in the law of procedure should be resolved in his favour (*Grille and Bose JJ*). MOUJ-  
LAL v EMPEROR 1910 N L J 565

—Ss 419, 420 421 and 561 A—*Summary dis-*  
*missal of jail appeal under S 421—Subsequent re-*  
*presented appeal under S 419—Maintainability—High*  
*Court if can review its own judgment*

A case under S 419 Cr P Code cannot

—Ss 421 and 369—*Jail appeal—Summary dis-*  
*missal—Effect—Subsequent appeal through counsel—*

is dismissed summarily, as soon  
and dated by the judges they  
and the order passed by them  
becomes final. A re-presented appeal filed at a later date  
is therefore not maintainable (*Zia-ul-Hasan and*  
*York, J.*)

—S 422—*Appeal from conviction—Parties—Right*

—S 422—*Scope and applicability*

S 422 Cr P Code, deals only with appeals and there  
is no provision dealing with revision, nor does  
it apply this procedure to revisions (*Henner,*  
ARAIN LAL v EMPEROR  
I L R (1910) All 533—190 I O 25—  
976—13 B A 100



CR. P. CODE (1898), S. 423

the nature of the sentence, same, yet it has no power which was not within the Court or to pass a sentence jurisdiction given to the trial Court by S 32, Cr. P. Code. The appellate Court cannot make any order

—S 423—*Retrial—Order for—When not proper.*

It would be dangerous to order a rehearing in which there is enmity between the Court is doubtful as to the value of may be adduced upon a rehearing.

*Meredith v. Emperor*

CR. P. CODE (1898), S. 436.

EMPEROR v. JHINA SOMA

L.L.E. (1939) Bom 618=185 I.C. 382=  
12 B B 248=41 Cr.L.J. 176.

423 (2)—*Verdict of jury—Interference of High Court to set aside verdict on one charge old conviction on rest of charges.*

the High Court finds the verdict by jury on the charges to be erroneous it can set aside that and uphold conviction on other charges on which

and need not  
J. A. M.

187 I.C. 456=

1940 Lah. 87.

Magistrate—

Police Act—

Revision—Jurisdiction of High Court. See 1939 Dig., Col 443 MAUGHANMAL GIANCHAND v. EMPEROR.

sent for—*Practice.*

should have done before presenting the  
(Beaumont, C.J. and Sen. J.) EMPEROR.  
190 I.C. 718=42 Bom L.R. 481=  
A.I.R. 1940 Bom 283.

—S. 423 (1) (d)—Order under S 250, Cr. P. Code, by appellate Court—If 'incidental' to acquittal

*Interference—Powers of High Court.*

Court finds the evidence and has

EMPEROR v. JHINA SOMA

1940 I.C. 456=

—Ss 435 and 438—*Proceedings under—Explanation—Call on for—Punishment*

es should not be called for in proceedings under Ss 435. be High Court desires any them. (Dawson.) NATHU

1910 A.M.L.J. 24.

LAL v. EMPEROR.

—S 435—*Revision—Competency—Executive order.*

No revision lies against an executive order of the District Magistrate passed for controlling a certain pro

Revision of report—If competence

decision, the verdict cannot be said to be erroneous of Sessions Judge to direct further inquiry. tution, i.e., a petition made receipt of the police report nplaint on which the petitioner S 200, Cr. P. Code. Magistrate merely passes ent to the Sessions Judge to



## CR P CODE (1898) S 439

41 Cr L J 191

—Ss 439 and 247—*Acquittal under S 247—Interference—Principles*

Acquittal under S 247 Cr P Code though one not on merits has the force of a complete acquittal for all purposes. The mere fact that the acquittal is not on

41 Cr L J 919—1940 N L J 399—  
A I R 1940 Nag 357

—S 439—*Alteration of conviction—Power of High Court*

On a reference under S 438 Cr P Code the High Court has no power to alter a conviction under S 323 to one under S 325 I P Code (*Bariley and Roxburgh*)

KUND  
in C  
govern

CODE S 115 (1940) 1 M L J 709 (F B)

—S 439—*Bail bond—Forfeiture—Failure to hear surety before order of forfeiture—If justifies interference*

See CR P CODE S 514 185 I C 598—6 B R 221

—S 439—*Competency of revision—Sessions Court*

having concurrent powers with High Court—*Revision direct to High Court—If this*

It is not usual for the High Court to entertain an application for revision direct when the applicant has not gone to the Court of Session which has concurrent powers of revision. But if the application has been admitted it must be disposed of on the merits (*Daile, J*)

—Ss

*Expediency of enquiry not stated—Interference in revision*

There should not be necessarily an interference in

J J JAWAKAPRASAD J EMPEROR 10 I C 621—  
12 R N 298—41 Cr L J 466—1940 N L J 108—  
A I R 1940 Nag 227

—S 439—*Discretion—Dismissal of complaint—Revision—Interference* See 1937 Dig Col 632

SADHURAM CHIMANDAS v CHIMANDAS BUDHURAM  
I L R (1940) Kur 275

—S 439—*Discretion—Erroneous under S 523—Interference by High Court*

Where a Magistrate who has refused to take proceedings under S 144 Cr P Code considered that, having refused to take proceedings under S 144 he was not competent to investigate the question as to who was in possession of the property seized by the police and has there fore directed the police to retain it in their cus

## CR P CODE (1898), S 439

today, and if it was liable to decay to sell it, and deposit the money in safe custody pending orders from a proper Court, the High Court would interfere with his order as he has not judicially exercised the discretion which S 523 confers on him. The Magistrate ought in such a case to exercise the discretion conferred on him by S 523 that is, if the Magistrate decides that one or other of the parties was in possession at the time the police seized the property, an order to be passed would be to restore property to possession. If the Magistrate is to decide who is in possession it would to issue a proclamation under sub-S 523 and proceed in accordance with one of that sub section (*Agartala,*

AGAR YADVA v M YUNUS  
I C 773—12 R P 451—6 B R 250—  
41 Cr L J 234—1939 P W N 675—  
20 Pat L T 712—A I R 1940 Pat 32

—S 439—*Discretion of High Court* See 1939  
Dig Col 446 EMPEROR v ABDULLAH KARIM  
I L R (1940) Kar 83—185 I C 268—  
12 B S 161—41 Cr L J 143

—S 439—*Enhancement—Application by private*

use to entertain an  
private complainant  
move. But where  
for interference it

does not matter how the case comes before the Court,  
whether  
priv  
J)

—S 439—*Enhancement by High Court—Applica-  
tion by complainant—Principles*

It would only be in a very extraordinary case that the High Court would enhance a sentence on the application of a complainant which the Crown opposes. The complainant may have been put to considerable loss but the Criminal Courts however cannot guarantee to se a complainant by infliction of a heavy penalty accused (*Gruer J*) BHAGOLELAL v EM

189 I C 382—13 R N 47—  
41 Cr L J 734—1940 N L J 309—  
A I R 1940 Nag 249

—S 439—*Enhancement of sentence—Powers of High Court—Murder—Sentence of transportation on evidence was circumstantial—If justified—*  
See PENAL CODE S 302

(1940) 2 M L J 895

—*Enhancement of sentence—Practice*  
Enhancement of sentence after trial is a very real hard hip to the prisoner and should be resorted to only when the original sentence is grossly inadequate (*Skemp J*) EMPEROR v SARDAR MAHOMED  
42 P L R 150.

—S 439—*Enhancement of sentence—Practice*

In a criminal trial the Court in revision is always

supported by circumstances

## CR P. CODE (1898), S 439.

The High Court in revision will not interfere with an order under S 144, Cr. P. Code, which has already expired and in which the finding as to the claim of the parties is supported by circumstances (*Agarwala, J.*)

BHUKHALI TEWARY v. ACHAI BARKUER

187 I C 349—12 B P 618—21 Pat L.T. 328—

41 Cr L.J. 451—6 B B 464—

1910 P.W.N. 465—A.I.R. 1910 Pat 471

—S 439—Order under S 144—Revision—Interference when order has spent its force

It is not the usual practice of High Court to interfere with an order which has spent its force unless there are special reasons for such interference (*Mohamad*

*Abdulla v. State of Hyderabad*)

A.I.R. 1940 B. 11

An order made by a Magistrate under S. 494, Cr. P. Code, can be set aside in revision, even if the revision application is made by a witness in the case who is the aggrieved person (*Dass, C.J. and Weston, J.*)

FAKIRCHAND RAMKRISHN v. MURAD UMAR

A.I.R. 1940 B. 233

—S 439—Pending proceedings—Interference—Grounds

The High Court can interfere in revision with a pending proceeding, where a criminal charge is unsustainable on the evidence of the prosecution witnesses. It is the duty of the High Court to interfere when the facts proved do not constitute an offence and the continuance of the trial would be an abuse of the process of Court (*Niyogi, J.*)

ABDUL KAHIM KHAN v. EMPEROR

189 I C 579—13 B N 67—

41 Cr L.J. 753—1940 N L J 183—

A.I.R. 1940 Nag 360

—S 439—Powers of High Court under—Interlocutory proceedings—Revision—Matter not on record—If can be taken into consideration.

It is plain that under S 439, Cr. P. Code, the High Court's revisional powers are only exercisable to rectify any illegality, irregularity, impropriety or mistake appearing on the face of the record of any proceeding in

jurisdiction. The High Court further is restricted to what appears on the record of the proceedings in the

## CR P CODE (1898), S 439

12 R.P. 534—20 Pat.L.T. 947—6 B.R. 377—

41 Cr.L.J. 349—1939 P.W.N. 871—

A.I.R. 1940 Pat. 97.

—S 439—Power of High Court—Order under S. 144—Revision—Interference after it ceases to have force. See 1939 Dig, Col 448 ARDESHIR PHIROZ SHAW MURZBAN, *In re* 186 I C 477—12 B B 352—

41 Cr L.J. 319—A.I.R. 1940 Bom 42.

—S 439—Power of revision—Order under S 145—

be refused on the

erately passed by a Magistrate under S 144, Cr. P. Code, when the Magistrate knew, and had been told on several prior occasions by his superiors, that he should proceed under S. 145, Cr. P. Code, if necessary, cannot be left alone on the mere ground that it is time expired. It is impossible to encourage a Magistrate to use his powers in that way.

—S 439—Quashing proceedings—Summons case wrongly tried as warrant case—Dilatory trial—No suitable evidence by prosecution—Error discovered towards end of trial—Retrial ordered—Quashing

A summons case was wrongly tried as a warrant case and the error in procedure was not pointed out by the Crown until the case was practically finished. The Magistrate thereupon ordered a fresh trial against which the accused came up to the High Court in revision.

Held, that further proceedings pending against the accused should be quashed inasmuch as the trial was conducted in a most dilatory manner by the Crown who had been given adjournments which would have been quite unsuitable in a summons case and who had not

once which could sustain a conviction.

*Khundhar, J.J.* D MODV v. EM

45 O.W.N. 53—A.I.R. 1940 Cal 679.

—S 439—Scope—Order under S. 144 ex parte—

under S. 144 (4) and (5)—Revision—

Power of High Court to interfere See 1939 Dig, Col.

448 ARDESHIR PHIROZ SHAW MURZBAN, *In re*.

2 B B 352—41 Cr L.J. 319—

A.I.R. 1940 Bom. 42

not fixed by the Nagpur High

Time spent in moving District

cal—If can be deducted—Prefer

CR P CODE (1898), S. 476.

1910 P.W.N 745=6 B.R. 754=41 Cr L.J. 702=  
A.I.R. 1910 Pat 601

—Ss 476 and 482—Failure of defendant in  
suit to produce certain records—Refusal by Court  
sanction a complaint under S 476—Complaint under  
S 482—Competency

After refusal by Court to sanction a complaint under  
S 476 a complaint under S 482, Cr P ( )  
for failure by a defendant in a civil  
certain documents

*Heid*, an offence under S 175, I.P. Code, was  
said to have been committed in the view or presence of  
the Court and the complaint was not competent. 13  
Mad 24 Ref. ( )

RAJAH, *In re*

—S 476—First application dismissed for non  
appearance of applicant—Second application—If can be  
made

There is no provision of law that a case  
under S 476 cannot be made where a  
has been dismissed for non-appearance

The principle of "*nemo debet*" is not applicable where  
there has been no inquiry on the merits (*Blacker, J.*)  
JAWALA PARSHAD v RAM PARSHAD

A.I.R. 1940 Lah. 526

—S 476—Form of complaint—Complaint not to  
invite conviction

A complaint which is lodged under S 476, Cr P Code,  
must omit from its contents any reference which might  
be construed by the Magistrate before whom the pro-  
ceedings are taken as a pressing invitation to record a  
finding adverse to any one charged with an offence  
The Magistrate must try the complaint as he would do a  
complaint of an ordinary kind and must remain com-  
pletely unaffected by any consideration of its origin  
(*Roberts C.J. and Braund, J.*) TAN BA CHENG v  
REGISTRAR, ORIGINAL SIDE HIGH COURT

1910 Rang L.R. 12=187 I.C. 754=12 R.R. 351=

41 Cr L.J. 515=A.I.R. 1910 Rang 104

CR P CODE (1898), S. 476-A

—S 476—Order by Civil Court making complaint

part—

A.I.R. 1940 Nag 72

—S 476—Power of Court—Offences not referred  
complaint,

enabling section and does  
including in his complaint  
S 195, Cr. P Code Nor  
does it debar the Magistrate to whom the complaint is  
presented from issuing process for such offences, if from  
the facts alleged they appear to have been committed

—Ss 476 and 195 (1) (c)—Power of Courts men-  
tioned in S 476—Complaint against persons not parties  
to proceedings before them, in respect of offences speci-  
fied in S 195 (1) (c)

S 476, Cr. P Code, does not inhibit the classes of  
Courts mentioned therein from making a complaint in  
respect of any of the offences specified in S 195 (1) (c)  
against persons not parties to a proceeding before it, in  
which or in relation to which the offence was committed  
(*Stone, C.J. and Clark, J.*) ABDUL RAHIM KHAN  
v PUSIABAI

I.L.R. (1940) Nag 652

—S 476—Proceedings in Civil Court under—  
Jurisdiction—If civil or criminal See C.P. CODE,  
S 115 (1940) 1 M.L.J. 719 (F.B.)

—S 476—Prosecution under S 193, I.P. Code—

Magistrate he is entitled to proceed against those others  
under the powers conferred up

led by the

—S 476-A—Power to make complaint—Suit  
transferred by District Judge to Sub-Judge retaining

CR P. CODE (1898), S 476 B

CR P CODE (1898), S 488

AIR 1940 Lah 292

—S 476 B and S 476—Appeal—Forum—Complaint by special Judge acting under U P Encumbered Estates Act. See 1939 Dig, Col 453. AKBAR HUSAIN KHAN v EMPEFOR. I.L.R. (1939) All 975—12 R.A. 371—41 Cr L.J. 227—185 I.C. 700—AIR 1940 All 7

—S 476 B—Complaint by single Judge of Court—Interference by appellate Bench

The power to lay a complaint under S Cr P Code, is a discretionary power, and an appellate Bench of the High Court would not interfere with the exercise of his discretion by a unless it could be shown that exercised under some misapp was plain on the face of the re Braund, J.) TAN BA CHE GINAL SIDE HIGH COURT 187 I.C. 751—12 R.E.

—S 476 B—Order dismissing appeal against default—Appellability

S 476 B gives an appeal against complaint not against a dismissal default (Blacker J.) JAWALA PARSHAD A.

—S 476 B—Superior Court appeal under—Revision—Power of

proved to have been cured (Davis J.C. and Lobo, J.) HEMIBAI v KUNDIBAI A.I.R. 1940 Sind 222

—Ss 488 and 369—Magistrate ordering maintenance by mistake—Cancellation—Legality—Proper procedure

A Magistrate in the first instance actually ordered the husband to pay maintenance of a certain sum for his wife

entire use of maintenance for the wife whilst enhancing that of the children

Held, that this was an illegality on the part of the

member of joint Hindu family—Order—Form of—If

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f her right to  
an order sen  
failure to pay

CR. P. CODE (1898), S. 488.

CR. P. CODE (1898), S. 488.

... of fact which the Magistrate has to decide

### *maintenance—Legality.*

Where a Magistrate comes to a finding under S 488 that the wife is entitled to maintenance at Rs 40 per month but does not pass a proper maintenance order in

—S 488 (3)—“Sufficient cause”—Adjudication as insolvent.

An order adjudicating as insolvent a person against whom an order for maintenance under S. 488, Cr P.

e which up  
of himself  
ssignee, he  
, to comply  
and Rox  
AL SEN

42 C. 11. 11. 11. L J. 507 =  
A.I.R. 1940 Cal 569

KUNDIBAI

A.I.R. 1940 Sind 222

—S 488  
orders under  
imprisonment  
ACI, S 25 (3),

—S 488 (3)—“just ground”—Offer by  
to maintain wife—Refusal by latter—When in  
and wife—If ground

—S 488 (3)—Sufficient cause—Adjudication in  
insolvency—Effect of.

The insolvency of a person who is ordered to pay

v. PALANIANDI M

12 E M 809 = 41 Cr L J. 532 = b1 L W 201 =  
1939 M W N 1255 = A I R 1940 Mad 292 =  
(1940) 1 M L J 171.

sufficient Where, however, the parties have no home  
of any sort and are moving about from place to place,  
each place where they so live, would be their home for

animus manendi or an  
period, at one place,  
ten alone can be said  
28 Lah. 853, Overr  
P. CHARAN DAS v  
449

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## CR. P. CODE (1898), S. 489.

course for him is to approach the Criminal Court under S 489 (2), Cr. P. Code and ask for the cancellation or variation of the order for maintenance (*Mysa Bin and Mosely, JJ*) U ARZEINA v MA KVIN SHWE

489 (2)

—S 491—*Habeas corpus*—Issue of writ of High Court See 1939 Dig, Col 457.

—DISTRICT MAGISTRATE OF TRIVANDRUM.

—66 I A 222—I.L.R. (1939) Kar (—) —S 491 and Extradition Act S 7—Warrant

by Political Agent with reference ISKAR HUSAIN

—S 494—*VIII—Procedure—Withdrawal*

—S 494—*Duty of Magistrate to exercise indepen*

## CR. P. CODE (1898), S. 499.

authority to the District Magistrate, but must act judicially and come to his own independent conclusion as to whether the withdrawal was to be allowed or not on the materials before him. A public prosecutor

Magistrate to concerned, acts THE KING v 190 I C 196 v 1 Cr L.J. 853— 310 Rang 189.

—S 499 (4), Cr. P. Code, does not apply to the case of a person held under

On the the Magis- 5 (1), the e Sub In ot It is actor who o conduct Magistrate

—S 494—*Duty of Magistrate to exercise indepen* permission to conduct the case on behalf of the prosecu

CHAND RAM KRISHN v MUR

—S 494—*Withdrawal—Dis Public Prosecutor*



## CR P CODE (1898), S 499

—S 499—Bond for attendance on day to be there after given—Reasonable notice of that day—Necessity for

Form No 25 in Sch V, Cr P Code provides for the time referred to in S 499 Cr P Code, to be not only a specified day but also a day on which the accused may thereafter be required to attend Nevertheless

REQUISITE 120000 J C H M 2000, J J FALEM CHAND v EMPEROR I L R (1940) Kar 479 =

13 R S 189 I C 800—41 Cr L J 802 =  
A I R 1940 Sind 136

—Ss 499 and 514—Surety bond—Requirements—

bond—Order sheet of Magistrate imposing conditions—  
If part of contract of signing order sheet—Eff

It is no doubt true th person who has stood bai be determined on the terms of the bail bond itself and that the order sheet of the Magistrate imposing conditions on the accused before he is released forms no part of the contract of bail But if the surety has signed the order sheet of the Magistrate against the part which contains the undertaking on which he accepted the bail bond the order sheet with the surety's signature itself

—S 502—Discharge of surety—Procedure

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A I R 1940 Sind 136

—S 507 (2)—Trial de novo by successor—Examination and cross examination of witness on commission in previous proceedings—Admissibility

—S 509 (1)—Scope of—If applies to evidence tendered by one who happens to be a doctor—Dying declaration recorded by a doctor—Proof—Necessity

te  
?

## CR P CODE (1898), S, 514.

1940 O W N 177 = 1940 A. W. R. (C C) 92 =  
1940 A Cr C 52 = A I R 1940 Oudh 209

—S 514—Bond for appearance of accused—  
Forfeiture—Order without giving opportunity of showing cause—Legality See 1939 D R, Col 459 KUMA  
RAPPA N v THE KING 185 I C 614 =

12 R R 240 = 41 Cr L J 216

—514—Bond for appearance of accused—For Recording of evidence—If necessary See 1939  
460 KUMARAPPA N v THE KING

185 I C 614 = 12 R R 240 = 41 Cr L J 216

—S 514—Bond for keeping peace—Subsequent

executed by him for keeping the peace is illegal  
A. J. J. CHANDA SINGH v EMPEROR

186 I C 612 = 12 R L 426 = 41 Cr L J 359 =  
A I R 1940 Lah 32

are for  
accu-  
KUMA-

12 R R 240 = 41 Cr L J 216

—S 514—Forfeiture of bond—Liability of surety—When arises

Where the accused and his surety have executed bonds for keeping the peace, in the first place it is the principal where

4—Forfeiture of bond—Notice to surety—

S 514, Cr P Code, requires the Court to record  
that the bond has been forfeited

A I R 1940 Sind 136

—Ss 514 and 496—Forfeiture of surety bond—  
Legality—No recognisance taken from accused

An order forfeiting a bond executed by a surety for

trate when called upon The person giving bail is the principal The person for whom bail is given is the subject of the contract If the person giving bail fails

may be  
in other  
essary to

185 I C 614 = 41 Cr L J 216

42 P L R 411 = A I R 1940 Lah 339

3 514—Scope—Non compliance—Effect—Order  
forfeiture without hearing sureties—Legality—If

## CR P CODE 1898 S 517

INDIAN EVIDENCE ACT 1872 S 53—*Interdict*

Before an order for the disposal of property was made, the court had to consider whether the failure to follow the provisions of S 514 of the Cr P Code will be a ground for setting aside the order. The court held that the failure of the court to follow the provisions of S 514 will not be a ground for setting aside the order. The court also held that the failure of the court to follow the provisions of S 514 will not be a ground for setting aside the order.

KAMILLA SAKIA IMEKKOR  
185 IC 538 6 B R 221 1940 P W N 151=  
12 R P 429 41 Cr L J 214=21 Pat L T 194=  
A I R 1940 Pat 375

S 517—*Order for disposal of property*—*Where the property is in the possession of the accused and the court has to decide whether the property should be restored to the complainant or the accused.*

It is held that the order is proper. *Edgry, J.*  
A H H KUMAR NABAHUMAR 189 IC 714=  
41 Cr L J 791=13 B C 123=A I R 1940 Cal 346

S 517—*Limitation Order for disposal of property*—*When the order is made after the lapse of time.*

There is no period of limitation for an application for an order under S 517 Cr P Code. S 517 cannot be read as requiring that the order for disposal of property must be passed simultaneously with the judgment in the case. The section gives jurisdiction to the Court to pass an order for the disposal of property either at the time of the conclusion of the trial or at a later date. Though the passing of such orders should not be unreasonably postponed the lapse of time does not relieve the Court of the duty and the corresponding period of time to pass orders for the disposal of property which is in the Court's custody or under its control. *(A. C. J. and Chatterji, JJ.)* DEOPUJAN MAHTO v. HUKAR AHIR 19 Pat 337=188 IC 260=6 B R 621=41 Cr L J 539=12 R P 695=1939 P W N 911=21 Pat L T 448=A I R 1940 Pat 198

S 517—*Order under section 517—Power to the court to make an order for disposal of property.*

The broad general principle of procedure both in Criminal and Civil Courts is that an order to the detriment of any party ought not to be passed without giving him notice and an opportunity of showing cause why it should not be made. S 517, Cr P Code does not require in terms, the issue of any notice to parties before an order under the section is passed. If an order regarding disposal of property is passed simultaneously with the judgment in the criminal case, a separate notice to the parties to show cause in respect of the disposal of the property is not necessary, but when an application is made after some lapse of time, it is only proper on general principle of law that the party to be affected by the proposed order should have notice of the application. *(A. C. J. and Chatterji, JJ.)* DEOPUJAN MAHTO v. HUKAR AHIR 19 Pat 337=188 IC 260=6 B R 621=41 Cr L J 539=12 R P 695=1939 P W N 911=21 Pat L T 448=A I R 1940 Pat 198

## CR P CODE (1898), S. 522

S 517—Order without hearing parties—*Legality.*  
Sec 1939 Dig Col 460 RAMAKRISHNAIA v. NETHANMA 186 IC 224=12 R M 638=41 Cr L J 275

S 521—*Order under S 501, I P Code, in respect of defamatory passages in book—Order for destruction of defamatory passages—Property—Per order.*

Where on a complaint in respect of a defamatory book certain passages in the book are held to be defamatory an order directing destruction of the entire book and the surrender of the property order as to direct the page in the book containing the objectionable passages to be destroyed. *(Lakshman Rao J.)* SUMITRAMMA v. KRISHNAMURTHI SASTRI 191 IC 84=52 L W 118=1940 M W N 632=A I R 1940 Mad 950

S 522—*Conviction by Bench of Honorary Magistrates—Order directing restoration of property by another Bench—Legality.*

Where the accused was convicted for criminal trespass by a Special Bench of Honorary Magistrates since abolished, another Bench has no jurisdiction to pass an order under S 522, Cr P Code directing the restoration of the property to the complainant. *(Abdul Rashid, J.)* BHANI v. NARAIN SINGH 186 IC 895=12 R L 443=41 Cr L J 387=41 P L R 908=A I R 1940 Lah 84

S 522—*Force—Meaning of*

The only force that is contemplated by S 522 is force as applied to a human body—the use of force as mentioned in Ss 349 and 350 I P Code. Hence, where the complainant was dispossessed of his house in his absence no criminal force can be said to have been used to any person. No order can therefore be made under S 522 40 P L R 923, Over A I R 1939 Lah 184, Appr. *(Din Muhammad and Ram Lal, JJ.)* NARAIN SINGH v. PANDA LAL 42 P L R 791=A I R 1940 Lah 460

S 522—*Force—Meaning of*

Criminal force as defined in S. 350 contemplates force used to a person and not to a thing. Where the complainant was dispossessed of his property in his absence by breaking open his lock, no criminal force can be said to have been used to any person. No order can therefore be made under S. 522, Cr P Code. *(Din Muhammad, J.)* KALAI DIN v. EMPEROR A I R 1940 Pesh 51.

S 522—*Order under—Legality—Unlawful entry into house when locked.* Sec 1939 Dig, Col. 461 RAM CHANDR v. EMPEROR 1 L R (1939) Lab 513

S 522—*Order under—Limitation*

Under S 522, Cr P Code, no order directing restoration of possession of property can be passed more than one month after the decision of the case. It is immaterial that the application for restoration of possession is made within one month from the decision of the case. *(Abdul Rashid, J.)* MUNSHI RAM v. MOTI. 41 P L R 877

S 522—*Order under—Limitation—Power of Court of revision*

In a proper case, the Court of appeal or the Court of revision can pass an order under S 522, Cr P Code, if each Court is satisfied that an order of the nature is necessary in the interest of justice. Where a trial Magistrate passed an order under this section more than two months after the date of conviction of the accused under S. 448, I P Code, but the delay in passing the order was not due to any fault on the part of the complainant.

CR P CODE (1898), S 499

—S 499—Bond for attendance on day to be there after given—Reasonable notice of that day—Necessity for

Form No 25 in Sch V, Cr P Code provides for the time referred to in S 499, Cr P Code to be not only a specified day but also a day on which the accused may thereafter be required to attend Nevertheless when the bond takes this latter form a reasonable notice must be given to the accused and his surety of the day on which the accused's attendance before the Court is required (*Davis J C and Lobo, J*) **FATEH CHAND v EMPEROR**  
**ILR (1940) Kar 479 =**  
**13 RS 51 = 189 IC 800 = 41 Cr LJ 802 =**  
**AIR 1940 Sind 138**

—Ss 499 and 514—Surety bond—Requirements—Bond by surety alone—If valid—Forfeiture of such bond—Proceedings under S 514, if can be taken See 1939 Dig, Col 459 **EMPEROR v BRAHMANAND VISRA**  
**ILR (1939) All 924 = 41 Cr LJ 85**

—S 499—Surety—Liability—If confined to bail bond—Order sheet of Magistrate imposing conditions—If part of contract of undertaking by surety—Surety signing order sheet—Effect of

It is no doubt true that generally the liability of a person who has stood bail for an accused person must be determined on the terms of the bail bond itself and

becomes a part of the contract of the surety In such pay

—S 502—Discharge of surety—Procedure

disc  
trat  
acc  
bef  
the  
bef  
CH

—S 507 (2)—Trial de novo by successor—Examination and cross examination of witness on commission

tendered by one, who happens to be a doctor—Dying declaration recorded by a doctor—Proof—Necessity

CR P CODE (1898), S. 514.

1940 W N 177 = 1940 A W R (C C) 82 =  
1940 A Cr C 52 = AIR 1940 Oudh 209

—S 514—Bond for appearance of accused—Forfeiture—Order without giving opportunity of showing cause—Legality See 1939 Dig, Col 459 **KUMARAPPAN v THE KING**  
**12 RE 240 = 41 Cr LJ 216**

—S 514—Bond for appearance of accused—Forfeiture—Recording of evidence—If necessary See 1939 Dig, Col 460 **KUMARAPPAN v THE KING**  
**185 IC 614 = 12 RE 240 = 41 Cr LJ 216**

—S 514—Bond for keeping peace—Subsequent offence compounded—Forfeiture of bond—Legality

Composition of offence under S 345 (6) has the effect of an acquittal of the accused and if there be no other evidence  
a  
VIC  
S

—S 514—Bond under S 106—Forfeiture for breach—Examination of witnesses in presence of accused—If necessary See 1939 Dig, Col 460 **KUMARAPPAN v THE KING**  
**12 RE 240 = 41 Cr LJ 216**

—Forfeiture of bond—Liability of surety

accused and his surety have executed  
ping the peace, in the first place it is the

41 Cr LJ 359 = AIR 1940 Lah 32

14—Forfeiture of bond—Notice to surety—

S 514, Cr P Code requires the Court to record evidence of the proof that the bond has been forfeited

—Ss 514 and 496—Forfeiture of surety bond—Legality—No recognisance taken from accused

principal The person for whom bail is given is the subject of the contract If the person giving bail falls clause may be  
ugh as in other  
not necessary to  
**INDAR v**  
**1 Cr LJ 958 =**  
**1940 Lah 339**  
—Effect—Order  
—Legality—If

## CR P CODE (1898) S 517

*justifies interference in revision—S 537—If cures defect*

Before an order of forfeiture is passed, the sureties should be called upon to show cause and heard. That is the appropriate procedure. But failure to follow the procedure laid down in S 514 of the Cr P Code will

firm were identified by their numbers and most of these notes were seized by the police. The Magistrate directed the latter firm to return the currency notes to the former firm under S 517.

*Held* that the order was proper (*Edgley J*)  
ANSHOY KUMAR v NABA KUMAR 189 IC 714=  
41 Cr LJ 791=13 RC 123=A IR 1940 Cal 346

for  
aff

an

at the time of the conclusion of the trial or at a later date. Though the passing of such orders unreasonably postponed the lapse of time to relieve the Court of the duty and the jurisdiction to pass orders for the disposal of property which is in the Court's custody or under its control (*Rowland and Chatterji JJ*) DEOP

v KUKUR AHIR 19 Pat 337=18 IC 11  
6 BB 621=41 Cr LJ 559=12 RP 695=  
1939 PWN 911=21 Pat LT 448=  
AIR 1940 Pat 198

*S 517—Notice—Order under section—Prior notice to parties—Necessity for*

The broad general principle of procedure both in Criminal and Civil Courts is that an order to the detri-

## CR P CODE (1898), S 522

*—S 517—Order without hearing parties—Legal ty See 1939 Dig Col 460 RAMAKRISHNAYYA v SKETHAMMA 186 IC 224=12 E M 636=41 Cr LJ 275*

*—S 521—Complaint under S 501 I P Code in respect of defamatory passages in book—Order for d i*

Where the accused was convicted for criminal trespass by a Special Bench of Honorary Magistrates since abolished, another Bench has no jurisdiction to pass an order under S 522, Cr P Code directing the restoration of the property to the complainant (*Abdul Rashid, J*)  
BHANI v NARAIN SINGH 186 IC 895=  
12 RL 443=41 Cr LJ 387=  
41 PLR 908=AIR 1940 Lah 84

*—S 522—Force—Meaning of*  
The only force that is contemplated by S 522 is force as men use where use in his been used made under AIR 1939 Lah and Ram Lal JJ)

*—S 522—Force—Meaning of*  
AIR 1940 Lah 460

*—S 522—Order under—Legality—Unlawful entry into house when locked See 1939 Dig Col 461 RAM CHAND v EMPEROR ILR (1939) Lah 513*

*—S 522—Order under—Limitation*  
Under S 522, Cr P Code, no order directing restoration of possession of property can be

## CE P CODE (1898) S 522

*Held* on revision that it was a fit case in which the power under S 522 Cr P Code should have been exercised and that even if there was any defect in the order of the Magistrate who had passed it, the High Court itself would pass that order (*Varma J*)

SAHEBJAN v EMPEROR

186 IC 423=41 Cr LJ

1940 P W N 56

—S 522 (1) and (3)—Restoration of possession—Limitation—Powers of High Court in revision *See* 1939 Dg Col 461 EMPEROR v NIHAL SINGH.

ILR (1939) All 863

—S 522 (3)—Court of reference—Meaning of  
A Court of reference in sub S (3) of S 522 can only be interpreted as meaning a Court which has the power to refer and that is only a Court empowered under S 433 Cr P Code. Hence a Court which has got power to report a case to the High Court for orders under S 438 is not a Court of reference (*Blacker J*)

MAHOMED SHARIF v DIVAN SINGH

187 IC 407=12 RL 467=41 Cr LJ 458=

ALR 1940 Lah 95

—S 523—Complaint of theft—Seizure of article during investigation—Case referred as of civil nature—Order for delivery of article to complainant—Legal title of—Proper order *See* 1939 Dg Col 461 SUBHAYYA *In re*

185 IC 440 (1)—12 RM 573=

41 Cr LJ 203

—S 526—Convenience and expediency *See* 1939 Dg Col 462 JASHANMAL v EMPEROR

ILR (1940) Kar 95

—S 526—Ground for transfer—Bail application unlawfully refused

The accused's application for bail was refused unlawfully and the trial of his case was postponed by the granting of unnecessary adjournments

*Held*, that there were sufficient facts of the case to the Court of session competent to try the case (*Macfarlane J*)

THE KING

186 IC 147=12 RE 258=

41 Cr LJ 250=ALR 1940 P W N 56

—S 526—Grounds—

Deputy Commissioner

Apprehension as to manner

of transfer to another

Where the Deputy Commissioner has himself lodged the first information report in a case when the accused alleges that the Deputy Commissioner was taking a personal interest in the case and was apprehensive of a fair trial before a Subordinate Magistrate in the same District, it is desirable that the case should be transferred to another District. Though the Deputy Magistrate may be perfectly right in all that he has said, it is embarrassing to the trial Magistrate when the Deputy Commissioner as a witness is specially when the accused is inclined to complain in the manner of the investigation made against him (*J. HORMUSJI v EMPEROR*)

## OR P CODE (1898) S 530

13 RN 85=1940 A Cr C 109=

1940 N L J 335=ALR 1940 Nag 275

—S 526—Ground for transfer—Failure to note questions disallowed

The fact that the Magistrate made no note on the

—S 526—Ground for transfer—Police Officers of district being witnesses

It is undesirable to transfer a case from a District because Police Officers of the district are witnesses in the case (*Skemp J*) DEWAN SINGH v EMPEROR

42 PLR 589=ALR 1940 Lah 527

—S 526—Ground for transfer—Refusal to call certain person as witness

Refusal to call a particular person as a defence witness is reason for transferring the case (*Skemp J*) MIRZA JAFAR BEG v EMPEROR

190 IC 561=

41 Cr LJ 948=ALR 1940 Lah 354

—S 526—Ground for transfer—Refusal to give copy of judicial order

judicial order a copy of it ought to have been given and that as the accused had reasonable apprehensions on that he might not receive a fair trial, the case was liable to be transferred to the Court of another Magistrate (*Skemp J*) GUR DAS RAM v EMPEROR

189 IC 605=41 Cr LJ 756=13 RL 108=

42 PLR 192=ALR 1940 Lah 283

—S 526—High Court's power of transfer—Application by witness—Competency—Grounds *See* 1939 Dg Col 463 OM RADHE v EMPEROR

ILR (1940) Kar 113

—S 526—Second transfer—Rule as to  
When a case has already been transferred very strong grounds are required to transfer it a second time. If accused or his counsel are so unfortunate as to have a

—S 526 (8)—Party—Informant under 10/—Statute of 1939 Dg Col 463 OM RADHE v

40 Kar 113

ate doubtful

party—Safe

ADHE v EM

ILR (1940) Kar 113

—Ss 529 and 197—Applicability—If wrong sanction under S 197—Special appointment of Magistrate otherwise competent to try case

Where in consequence of a wrongly given sanction under S 197 a Magistrate otherwise competent to try

## CR P CODE (1898) S 530

1939 Dig Col 463 KAM PRASHAD & DHANNA  
185 LC 415-12 RL 308-41 Cr LJ 181

under  
S 448  
Legality  
BALW.

offence

Dig Col 464 EMPEROR & MAHANAND & HERAJ

## CR P CODE (1898) S 540

The irregularity in the proceedings before the trial in  
consequence of the sanction of the Local Government

C

curable under See CR P CODE SS 104 AND 533  
1940 N L J 497

S 533—Scope—Confession—Form.

recording of—If curable See CR P C

AND 533

S 533—Scope—Defect of substance—If curable

S 533 Cr P Code cannot be brought in to cure a  
defect of substance By using its provisions only a

239 (d)—Effect on conviction—Illegality

1940 N L J 497

charge was framed—Accused misled in defence—Order  
of acquittal by appellate Court—Legality See CR P  
CODE SS 232 AND 535 44 CWN 400

Ss 536 and 537—Scope—Irregularity in con-

stitution of jury—If curable See 1939 Dig Col 465

SHEWARAM JETHANAND & EMPEROR

ILL (1940) Kar 249-41 Cr LJ 28

S 537—Absence of pt

S 10 of the Child Marriage A

curable under S 537 See

TRIAINT ACT S 10 AND CR P CODE S 533

1940 N L J 224

S 537—Applicability—Source of information

not recorded in preliminary order—If

P CODE SS 145 AND 537—PRELIM

CODE S 342

S 537—Scope—Non compliance with S 342—

If cured See CR P CODE S 342

42 Bom LR 695

S 537—Scope—Summary trial of offence not so

triable—Legality of—Defect—If curable

ILL (1940) Kar 123

J) MAHANAND & EMPEROR

ILL (1940) Kar 123

## CE P CODE (1898), S 540

(*Krishnaswami Ayyangar, J*) REX : NARAYANA REDDI 1840 M W N 1164=52 L W 790

S 540—Duty of Court under—Summoning of witnesses See 1939 Dig, Col 466 NARASINGH SINGH v EMPEROR 6 B R 215=

185 I C 591=72 P D 101=14 C T 7 200

Ss 540

witnesses at the en

again examined

Though the provisions of S 540, Cr P Code are very wide and a witness can be summoned and examined the Court at any stage of an enquiry or trial, still it is not proper to examine the witnesses under that section after a case is practically finished and without examining the accused again under S 342 (*Zia ul Hasan, J*)

## CRIMINAL TRIAL

S 561 A—If confers power on High Court to review its own judgment. See CR P CODE Ss 419 420 421 AND 561-A 1940 O A 385

Ss 562 and 563—Sentence during period of binding over—Appeal—Limitation—Starting point See AND CR P CODE Ss 1940 Rang L R 386

S 561 A—Applicability—Youthful offenders—Conviction under Ss 380 and 457, I P Code—

Ss 561 A and 367—Deletion of discharge order

tence of transportation or  
The section is not applicable to a case where a sentence of whipping is passed  
An order to report in a case where there is only a sentence of whipping is illegal (*Dunkley, J*)  
THE KING v BA KYAW 1840 Rang L R 527= A I R 1940 Rang 258

EMPEROR 15 Luck 39  
S 561 A—Expunging remarks from lower Court's judgment—Jurisdiction of High Court—Inherent powers—When exercisable

The High Court has no jurisdiction under S 561 A, Cr P Code

as permissible till it is shown to be prohibited by law  
(*Gruer, J*) HANSRAJ v EMPEROR 1940 N L J 449=A I R 1940 Nag 390

Adjournment—Adjournment after framing of charge—If should be long

It is not incumbent on Court to give a long adjournment after charge is framed against the accused  
(*Gruer, J*) BHANWARSINGH v SUKHRAMSINGH 188 I O 413=13 R N 2=41 Cr L J 585= 1940 N L J 410=A I R 1940 Nag 283

Adjournment—Telegram from pleader—Court if obliged to pay attention

A Court is not obliged to pay any attention to a telegram

188 I O 413=13 R N 2=41 Cr L J 585= 1940 N L J 410=A I R 1940 Nag 283

Beneficially—Appeal—Re-trial—Order for—When to be made See 1939 Dg Col 470 SHEWARAM JETHA 1940 N L J 28

by Judge of Judicial Sessions Jurisdiction—

Court is entitled to expunge any remarks in the lower Court's judgment which it thinks ought not to have been made (*Beaumont, C J and Sen, J*)

## CRIMINAL TRIAL

Appeal to Judicial Commissioner's Court—If let *See*  
1939 Dg Col 470 SHEWARAM JETHANAND v  
EMPEROR I L R (1940) Kar 249 =  
41 Cr L J 28

—Bar of—Matter in issue decided by Civil Court—  
Criminal Court if debarred for  
case *See* 1939 Dg Col 470  
PWA CHOME 1940 Rang L  
—Benefit of doubt—Fact  
accused and evidence not concl

## injuries on alleged rioters

The absence of injuries on the persons of the alleged  
rioters arrested shortly after the occurrence is a point  
which in a case where the evidence is partisan and un-  
certain must operate as a ground for giving the benefit  
of doubt as to participation (*Dulip Singh and Sale,*  
*JJ*) MOHAN SINGH v EMPEROR

188 I C 717 = 13 R L  
42 P L R 484 =

—Benefit of doubt—Co  
Suspicion sufficiency—Duty

Once the case as presented  
is found to be false, the  
convicted A mere suspicion  
for a conviction Once  
doubt about the truth of the prosecution ver-  
sion as first recorded then the accused is

KANAKASABAI  
12 R M 632 =  
1910 Mad 1

—Burden of proof—Duty of prosecution to  
prove case against accused, even when case set up  
by accused is untrue

It is the duty of the prosecution to prove the  
case against the accused, and even if the version  
put forward by the defence is wholly untrue, the  
prosecution must establish beyond all reasonable  
doubt that the case put forward by them is true  
(*Harries, C J and Fazl Ali J*) JADU JHA  
F M P R 185 I C 162 = 12 R P 339 =

## CRIMINAL TRIAL.

1940 P.W.N. 197 = 41 Cr.L.J. 114 =  
6 B.R. 110 = A.I.R. 1940 Pat 365

—Burden of proof—Duty of prosecution to prove  
guilt of accused beyond reasonable doubt

There is no question in a criminal case of the accused  
ence The burden of  
is always on the pro  
convicted only if he is  
ly because he fails to  
explanation that the

nothing left to throw any doubt on the prosecution case  
the accused is liable to be convicted But the onus of  
proving the guilt of the accused beyond reasonable doubt  
never changes, it always rests on the prosecution Even  
in those cases in which the accused is required to produce  
evidence on some point or other, and does so the rejec-  
tion of this evidence as unsatisfactory does not neces-

—Confession—Admissibility—Accused confessing  
to have killed victim in particular way—Medical

—Confession—Admissibility—Considerations for  
Court—Free and voluntary nature of confession—Pro-  
secution is bound to prove—All parts of confession,  
if to be given equal weight

All parts of a confession are not entitled to equal  
weight But it is the duty of every Court to inquire  
very carefully into all the circumstances which have led  
to the making of the confession The length of time  
during which an accused person was in police custody  
before he made his confession is an important element  
for the consideration of the Court in reference to the  
admissibility of the confession The admissibility  
each confession must be decided on all the facts



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surrounding circumstances and also from the intrinsic evidence of the confession itself, there being no hard and fast rule. It is not necessary for the prosecution affirmatively to prove that the confession was freely and and voluntarily made (*Wadia, J*) **EMPEROR v BHAGWANDAS BISESAR** 42 Bom L.R. 938

—Confession—Conviction on retracted confession—Absence of corroborative

1939 Dig, Col 471

186 I.C. 192=

AIR 1940 All 46

—Confession—Extra judicial and Retracted—Admissibility See EVIDENCE ACT S 24—RETRACTED EXTRA JUDICIAL CONFESSION 1940 N.L.J. 623

—Confession—If to be accepted or rejected as a whole

A Court is not bound in law to accept a confession as a whole. If the Court is satisfied that part of a confession is true, it may accept that part.

—Confessions—Kinds of—Modes of proof—Difference in

Confessions are of two kinds judicial and extra judicial.

—Confession—Retracted, and use of against confessor

—Corroboration—Necessity

A confession is not to be merely because it is retracted the confession the retracter the basis of conviction if it is corroborated.

the general story of the alleged crime but must also connect the co accused with it. It is however not illegal to convict an accused person on the confession of a co accused nor is

EMPEROR v BHAGWANDAS BISESAR

42 Bom L.R. 938

—Conviction—Basis of—Mere probability—Sufficiency of See 1939 Dig, Col 472, MOHIDEEN PICHHA 12 B.L.J. 1

In the case, on the facts and

When the facts made

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insufficient to turn the scales against him (*Young, C.J. and Skemp, J.*) **BACHAN SINGH v DARA** 42 P.L.E. 559.

—Costs—Inability to serve notice on one of the accused

Where it was not possible to serve a notice on one of the accused, the costs of the proceedings were not to be awarded against the accused.

—Counter and connected case—Use of evidence in one, in the other—Legality—If curable under S. 537, Cr. P. Code

The use in a case of evidence produced in another case is not a mere irregularity but an illegality and not curable by S. 537 Cr. P. Code. The very use of evidence which is not part of the record is by itself proof of prejudice to the accused (*Zia ul-Hasan, J.*) **BENI MADHO v EMPEROR** 190 I.C. 71=

1940 A.C. 132=13 R.O. 125=1940 O.L.R. 521=

41 Cr.L.J. 816=1940 O.W.N. 923=

1940 A.W.R. (C.O.) 370=1940 O.A. 596

—Counter-cases contradictory to each other—Intervention of—Propriety—Duty of Public Prosecutor—Duty of Police in investigating cases and launching

—Counter-cases—Evidence—Right to use evidence given in one case in the other

Where two persons bring cases of mutual assault, the Magistrate is not entitled to use evidence given in one case as evidence in the other, and a conviction based upon such evidence cannot be upheld (*Henderson, J.*)

Mrs. WALCH v EMPEROR 186 I.C. 67=

41 Cr.L.J. 247=12 R.C. 466=

AIR 1940 Cal 59

—Cross cases—Hearing by same assessors and deci-

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—Duty of Court—Case arising out of party faction  
 —Duty to ascertain cause of trouble—Hearsay evidence  
 —Admissibility See 1939 Dig, Col 473 NARASINGH  
 SINGH v EMPEROR 6 B R 215-185 I O 504-  
 12 B P 431-41 Cr L J 209

—Duty of Court—Complainant's request to sum-  
 mon public officer to produce document—Duty to issue  
 summons

A Magistrate is bound to issue summons to a witness  
 for production of documents at the instance of a com-  
 plainant who prays for the same at his own cost and is  
 not justified in rejecting the request on the ground that  
 the witness is a public officer and that the complainant

AIR 1940 Mad 746

—Duty of Court—Delay in trying case—Delay of

during trial

If on an application filed in the course of a criminal  
 trial the Court merely says "file" without passing any  
 orders

ability  
 evidence for accused as for prosecution

—Duty of Magistrate to commit to sessions cases of

—Duty of Magistrate—Transfer application pend-  
 ing—Disposal of case—Propriety

—Duty of police officer conducting investigation  
 The form of criminal trial is not inquisitorial but  
 accusatory. The investigation must therefore be direct  
 and not to extract admissions from the suspect, but to the

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discovery of evidence, leaving it to the suspect to  
 explain, if it tends to prove his guilt (*Niyogi, J*)  
 DINANATH v EMPEROR I L R (1940) Nag 232-  
 189 I O 591-41 Cr L J 757-13 B N 58-  
 1940 N L J 667-A I R 1940 Nag 186

—Duty of police—Raising of communal questions  
 —Undesirability See 1939 Dig Col 474 ABDUL  
 SUBHAN v EMPEROR 186 I O 192-  
 12 B A 381-41 Cr L J 258-A I R 1940 All 46

—Duty of prosecution See 1939 Dig, Col 474  
 SHEWARAM JETHANAND v EMPEROR

I L R (1940) Kar 249-41 Cr L J 28

—Duty of prosecution—Delay in investigation,  
 the charge—Effect of

RISHNAN  
 —41 Cr L J 821-  
 I R 1940 Mad 329

—Duty of prosecution—Duty to place entire evi-  
 dence before Court See 1939 Dig, Col 474 NGA  
 185 I O 303-  
 12 B R 189-41 Cr L J 153

on—Examination of complain  
 to examine—Propriety. See  
 EX v KRISHNAN

180 I O 143-13 B M 386-41 Cr L J 821-  
 A I R 1940 Mad 329

—Duty of prosecution—Exclusion of inadmissible

dog

The evidence of witnesses produced by an accused

indictment and are separately defended any witness  
 called by one of them may be cross examined on behalf  
 testimony tending to cri

is therefore admissible  
 AL v EMPEROR

Lah 521-188 I O 410-  
 Cr L J 637-13 B L 41-  
 A I R 1940 Lah 210

on—Evidence of complain

ants and their relations  
 In a semi-communal matter where one of the  
 minorities is small, it is only natural that many will  
 most necessarily be connected with one of the

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dispute, in some way or other. In such a case it is not right to disbelieve uniformly all witnesses who are either complainants, or the relatives of complainants or their tenants, without any relation to their actual evidence (*Collister and Braund JJ*) **EMPEROR v**

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satisfy the Court as regards a few of the accused when the evidence of the same witnesses does not satisfy the Court in respect of a large number of the accused. The attempt to draw a distinction between the credibility of the same person's evidence so far as it concerns some of

and so far as it concerns others is an attempt at something which is really impossible and it cannot promote the advancement of Justice.  
*Row, J*) **VENKATARATNAM v RAMA**  
190 I C 366 = 13 B M 405 =  
41 Cr L J 903 = 1939 M W N 1256.

ence—Dying declaration—Corroboration—  
See EVIDENCE ACT, S 32 (1)

1940 M W N 163

evidence—Necessity for full and conclusive  
is on accused—  
of causing death  
in cesspool—Facts

ence of murder  
ally causing the  
ing it in a cess-  
prosecution must  
lead of death

12 B M 611—41 Cr L J 337 = . . . . .

—Evidence—Appreciation  
coming forward immediately

The mere fact that an eye witness does not come forward immediately an investigation is begun is not by itself necessarily a sufficient ground for rejecting his testimony (*Ranjimal and*  
**RUGSINGH v SARKAR** 19 . . . . .)

—Evidence—Approver's  
Reliability See 1939 Dig., Cr  
**BHOLA NATH** . . . . .

—Evidence—Charge against  
a quittal of two on ground of

—Evidence—If ground for acquittal of third also when sufficient evidence exists against him

If of three equally guilty people two are so fortunate as to escape owing to the evidence not sufficiently implicating them as a result of the strict application of the rules of evidence, it is neither right nor logically sound to acquit the other accused against whom there is sufficient evidence justifying a conviction (*Burn and*  
*Mockitt JJ*) **RAMI REDDI, In re**

52 J. W 420 (2) = 1940 M W N 1045

—Evidence—Charge of murder—Evidence proving that accused inflicted fatal wounds—Injuries on accused

evidence merely because the prosecution witnesses do not explain how the accused himself came by his injuries. Where the accused is properly convicted of murder and it is found that the attack upon the deceased was deliberate . . . . .

—Evidence—Duty of prosecution—Evidence untrustworthy and unreliable as regards some accused—If can be relied on as regards others

It is the duty of the prosecution to establish the guilt of the accused by evidence which satisfies the Court and it cannot be said that evidence which is for the most part untrustworthy can be relied upon or can be said to

nancy shortly before the date in question, and was delivered of a child before the finding of a dead child in

—Evidence  
Magistrate

**EMPEROR**

—Evidence

against a particular individual—Appreciation—Method of approach

It should no doubt be recognised that in a semi communal matter, it is always possible that a 'deadset' may be made against a particular individual of prominence or influence and that that possibility should always be borne in mind, but the very large volume of evidence by itself should not be treated as giving rise to

generalisations like 'suspicion', are a

of the evidence  
stances of the case

**FROR v AFTAB**

49 = 13 B A 55 =

41 Cr L J 647 = 1940 A Cr C 21 =

1910 A L J 206 = 1940 A W R (H O) 85 =

A I R 1940 All 231

—Evidence—Witness—Acceptance of evidence as regards some accused and rejection as regards others—  
unaffiliated

Witness whose evidence has to be rejected so far as the accused are concerned cannot safely be accepted if relied on in the case of other accused. The procedure of rejecting the evidence of certain witnesses so far as certain accused are concerned and accepting it so far as others are concerned cannot be upheld (*Pandurang Row J*) **SHANBAGAPERUMAL NAICKER v EM**  
**PEROR** 186 I C 601 = 12 B M 669 =

41 Cr L J 342 = 1939 M W N 1251 =

A I R 1940 Mad 279.

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## —Evidence—Value of—Approver's statement

A conviction can be based on the statement of an approver if it is fully corroborated in material particulars by independent evidence (*Abdul Qayoom C J*) GHANI DAR v STATE 42 P L R J & K 116

## —Evidence—Value of—Approver's uncorroborated evidence

A conviction cannot be based on the evidence of an approver when it has not been corroborated by independent evidence and the medical evidence (*Abdul Q. J*) KAPURA v STATE

## —Evidence—Value of—Against co accused

If in a joint trial of two accused the evidence of a witness Court as against one of the accused who is acquitted it should not be believed against the other in the absence of convincing reasons (*Abdul Qayoom C J*) ABDULLA STATE 42 P L R J & K 75

## —Evidence—Value of—Evidence of witness tainted with falsehood

Per Young C J—Where the falsehood is merely an en broderie to a story that would not be enough to discredit the whole of the witness's evidence. But if the falsehood is on a major point in the case, or if one of the essential circumstances of the story told is clearly unfounded this is enough to discredit the witness altogether (*Young C J and Skemp J*) NANDIA v EMPEROR 190 I C 668=42 P L R 570= A I R 1940 Lah 457

## —Evidence—Value of—First Information report

The first information report made to the police need not contain full details of the occurrence. Its object is simply to acquaint the police of the commission of an offence. It is not a substantive piece of evidence.

statement admissible to corroborate or contradict the author of it (*Waur, J*) AHMED SHAH v STATE 42 P L R J & K 362

## —Evidence—Value of—Opinion of medical man

While any two or more men may well be in a position to recognise a particular group of rioters and those only, yet where witnesses who have no obvious connection with one another furnish long lists of identical people whom they say they recognised among the rioters there is a possibility that this identification is the result of

## CRIMINAL TRIAL

collaboration between them rather than of actual observation. The true principle to be adopted in such cases is not to discard their evidence altogether, but to regard it, nevertheless with a great deal of suspicion unless it is confirmed from other reliable sources (*Collister and Braund, J J*) EMPEROR v AFTAB MAHOMED KHAN 188 I C 649=13 B A 55=41 Cr L J 647= 1940 A L J 206=1940 A Cr C 24=

## witnesses—Propriety

In principle, it is of course objectionable for a police officer who has received information from the accused and is proc to repeat and Gruer

## —Judgment—Contents—Duty of trial Courts

It is not sufficient for trial Courts to give a summary of the various statements in their judgments but they should judge and assess the true evidentiary value of these statements. The judgments of judicial Courts should be self contained and should contain a proper discussion of the material points involved in the case (*Abdul Qayoom C J*) KARIM AITU v STATE 42 P L R J & K 321

—Judgment—Remarks against person not before Court and without affording opportunity for explanation—Expunging of *See* 1939 Dig, Col 479 LAKSHMANA RAO *In re* 186 I C 472=41 Cr L J 317= 12 R M 657=A I R 1940 Mad 134.

## —Jurisdiction—Charge under S 406 I P Code

—Accused arrested illegally outside jurisdiction and brought up—Release on bail—Subsequent appearance of accused—Jurisdiction of Magistrate—If affected by

Case depending upon circumstantial evidence. *See* 1939 D R, Col 479 SHEWARAM JETHANAND v EMPEROR, I L R (1940) Kar 249=41 Cr L J 28  
—Liability—Test of—Motive—Relevancy—Doing of lawful act but with dishonest motive—Offence  
PENAL CODE, S 383 1940 P W M

CRIMINAL TRIBES ACT (1924). S. 23

to (Davis, J C and Weston, J) EMPEROR v.  
ACHAR HANZO I.L.R. (1940) Kar 477

—Sentence — Murder — Youth of accused—If ground for not awarding death sentence

Youth by itself is not a reason why the Court should evade its duty of sentencing the accused to death especially in the case of a cruel murder (*Burn and Mockett, JJ*) CHENNA REDDI v EMPEROR

ILR (1940) Mad 251-1940 MWN 86=  
AIR 1940 Mad 710

—*Sentences*—*Police officers committing offences*  
Where persons charged with the maintenance of law

3 the law and have re-  
the credit of detecting

ly dealt with (Gruer  
AND V. EMPEROR

190 IC 849-1940 N.L.J 459=  
AIR 1940 Nag 340

~~Sentence~~ Specific offence proved to be connected  
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ted commis  
he reads the

complaint and even before he examines the complainant  
(Gruer, J) HARINARAYAN v GOVINDRAM

188 IC 606=13 EN 9=41 Cr LJ 645=  
1940 N.LJ 304=AIR 1940 Nag 245

Transfer—Grounds—Magistrate wrongly admit  
to a dance—If a first ground. See 1939 Dig.  
ROR

• L R (1940) Kar 113  
ence of jurisdiction—

t authorized to transfer

that a case is outside  
procedure is either to  
refer the

14

—W. L. L. — Binding down for reference —

Witnesses—Binding down for appearance—  
Power of Magistrate  
When a Magistrate cannot take cognizance of an

When a Magistrate cannot take cognizance of an offence his action in binding down certain witnesses for appearance in connection with that offence is clearly

1. *Journal of the American Medical Association*, 1997; 277: 1039-1043.

[illegible]

time of conviction and not to the time of the occurrence which is the subject matter of the case which ends in

which is the subject matter of the case which shall be



**CUSTOM (N W F P)**

of the village cannot alienate his right of residence therein without their permission. There is no special custom contrary to this general custom in the village of Zaida (*Almond, J C*) **JAIKARAN DASS v ABDUL GHAFUR KHAN** 190 IC 35-13 R Pesh 20=AIE 1940 Pesh 31

—(N W F P)—*Succession*—*Female heirs of collaterals*

The Customary law of the mention the succession to the prior by female heirs of his C and Mir Ahmad, J) N RAHIM JANA 190 IC 42

—(Oudh)—*Succession*—

185 IC 441=1940 OLR 3=12 RO 223=AIE 1940 Oudh 152

—*Proof*—*Judicial decisions as evidence* See 1938 Dig, Col 610 **TULSHIRAM v CHUNNILAL**

ILR (1940) Nag 149

—*Proof*—*Mode*—*Instances*

Custom is a question of fact and it has to be established by proof in the shape of instances etc., and a finding as to custom cannot be based on mere inferences (*Bhude, J*) **RAHIM DASS v MT SARUPI** 187 IC 218

41 PLR 892=AIR

—*Proof of*—*Quantum of evidence*

There is no hard and fast rule as evidence would be sufficient to prove the custom. It depends entirely on the evidence as well as on the circumstances of some cases a large number of instances are sufficient while in others a much smaller number is quite sufficient (*Thom, C J* and *Gai*) **NARAIN SINGH v NET RAM**

1940 A WE (HC) 486=1940 ALJ 650=

—(Punjab)—*Adna maliks*—*Right of*—*Village* Noon Nasheb District Mianwah See 1939 Dig, Col 486 **MUSA v GHULAM QASIM**

ILR (1939) Lah 535

—(Punjab)—*Adoption*—*Sister's or daughter's son*

**CUSTOM (Punjab)**

Col 483 **RANJIT SINGH v NAWAB KHAN**

185 IC 395=12 RL 284

—(Punjab)—*Alienation*—*Non proprietors*—*Rights of*—*Rules as to* See 1939 Dig, Col 483 **RANJIT SINGH v NAWAB KHAN** 185 IC 395=12 RL 284

—(Punjab)—*Alienation*—*Powers of*—*Sonless Say*

185 IC 395=12 RL 284

—(Punjab)—*Alienation*—*Widow*—*Jasrotia Raj*

puts of village Sukho Chak in Gurdaspur District See 1939 Dig Col 489 **RISAL SINGH v ARJUN DEVI**

42 PLR 286

—(Punjab)—*Alienation*—*Widow*—*Legal necessity*—*Pilgrimage to Gaya* See 1939 Dig, Col 490

**MANSA RAM v SADHU RAM** 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

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—(Punjab)—*Alienation*—*Widow*—*Powers of*

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—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

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—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*

who in 185 IC 422=12 RL 291

—(Punjab)—*Alienation*—*Widow*—*Powers of*





## CUSTOM (Punjab)

—(Punjab)—*Applicability—Rule as to*

There is no such thing as 'general custom' and the point at issue in each case must be decided in accordance with the custom applicable to the parties if any such custom is proved. If no rule of custom is proved on a particular point that point must be decided according to personal law (*Bhidi J*) KHAN GUL KHAN v KARAM NISHAN 189 IC 851=13 EL 117=

42 P L R 14=A I R 1940 Lah 172

—(Punjab)—Customary dues—Village Mandauli

—Rights of Rajput

See 1939 D G, Col

## —(Punjab)—

*favour of his wife—*

There is nothing District which prevents the husband of his wife during the subsistence of the marriage. The customary right of the husband to make land in favour of his wife on account of dower be disputed. Custom would obviously not sanction gift of this kind made for purpose

rightful heirs and the amount of land with the circumstances of the giver and

derations of some weight in the eye of

(*Rashid J*) CHAN PIR v FAKAR SHAH

189 IC 725=

—(Punjab)

share given to her

Col 491 DHARMON v RAN SINGH 185 IC 848=

12 EL 323

—(Punjab)—*Riwayt am—Applicability*

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MANAK CHAND A I R 1940 Lah. 392

—(Punjab)—*Riwayt am—Construction—Reference to ancestral property*

In the absence of a clear statement to the contrary 'question is' and answers in the *riwayt am* should be taken to refer to ancestral property only. Hence the question and answer 40 of the *riwayt am* of Ambala

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## CUSTOM (Punjab)

Among the Khatri of Rawalpindi the right of representation in collateral succession is recognised by custom and the strict rule of Hindu Law is not followed (*Tek Chand and Beckett, JJ*) DIWAN CHAND v BEL RAM 190 IC 801=42 P L R 525=

A I R 1940 Lah 431

—(Punjab)—*Succession—Daughters—Atrains of*

*Karnal town*

Among Atrains of Karnal town a daughter succeeds in the absence of male issue in preference to a brother

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## CUSTOM (Punjab)

—(Punjab)—*Alid*—An *real property*—*Mughal of Gwalior Khan Takel*

There is no custom among the Mughals of the Gwalior Khan Takel to make a regular annual property within the taluk in means of a will (*Alid Fakir*) AP 11 MAH 10 ALFA KHAN

1921 IC 76-17 RL 97-42 PLR 70-  
AIR 1910 Lah 109

—*Trif*—*It is a law*—*Custom as to grant of maintenance to a wife may be in force*—*Presumptions*—*When can be held to be established*—*Indian Evidence Act 1908 Dig Col 484 MAHA KASARI V. NARAYAN LAL*

1921 IC 123-13 RM 144

—*I got it out of the hands of a company to perform funeral services to the dead*—*Custom as to service of right*—*It is established*—*Custom to decide rights*—*Maintainability*

Where the successors of a party who has given a declaration that they are entitled to perform certain funeral services to the dead in the locality to the exclusion of the successors of another locality and it is established that they have been rendering the services for a number of years it was held that the evidence did not establish a custom that every resident in the locality should avail himself of the services of those successors alone and that it was purely a matter of contract between the parties concerned and as such the suit was not maintainable (*Pandit J. GANCA LAL V. JAMNA*) 1921 IC 831-13 RA 134-  
1910 AWR (HC) 226-1910 ALJ 345-  
1910 RD 150-AIR 1910 All 513

—*Suit as to*—*Mahomedans*—*Exclusion of females*—*Val day*

Where with reference to a petty Mahomedan family in Ajmer a custom of exclusion of females from inheritance was set up it was held that it was opposed to ordinary principles of the shariat and that a custom of that kind must be shown to be an most reasonable and invariable. It was further held that the custom alleged was neither ancient nor reasonable and that the mere fact that females had been deprived of their rightful share of inheritance provided no proof that such custom existed (*Darzi*) SHER MOHAMMAD v. KHAILUL RAHMAN 1910 A MLJ 12

—*Validity*—*Essentials*

A custom must be established to be ancient and invariable before legal rec (*Thomas C J and AKBARI*)

12 R O

DAMAGES—Measure of—Master and servant—Wrongful dismissal of servant—Damages—Assessment—Principles See

FUL DISMISSAL

DANGEROUS I

(a) and 32—*Script*—*to Act*—*Burden of proof*—*Accused found in possession of opium*—*No evidence of import from elsewhere*

the fact of import cannot be presumed from mere possession of the dangerous drug. Where all that is proved that a certain amount of crude opium was found in the possession of the accused, but there is no evidence to

## DEBTOR AND CREDITOR.

show that he actually imported the thing from anywhere else it cannot be presumed that the accused has committed any offence in respect of a dangerous drug and he cannot be convicted under S 13 (a) of the Dangerous Drugs Act. Presumption cannot be substituted for the proof of facts which go to make up an offence (*Harris C J and Farooq*) RAGHUNAR NAYAL MISHR v. EMPERO 21 Pat L.T. 976

—B 22—*Large and effect*—*Interference under*—*Interference in absence of proof of import*—*Reference from mere possession*—*It is established* See DANGEROUS DRUGS ACT, S 13 (a) AND 32 21 Pat L.T. 876

DEBTOR AND CREDITOR—Assignment of part of debt—Content of debt not obtained—Suit by assignee—If competent

There can be no out and out assignment of part of a debt without the consent or acknowledgement of the debtor except in the sense that the assignee may in equity be looked upon as a joint creditor with the assignor. Just as a suit by one joint creditor for his part of a debt is not competent a suit by an assignee of part of a debt is not competent when the assignment is made without the consent or acknowledgement of the debtor (*Addison J*) MOHAN LAL OM PARKASH v. HALA LUX HAJRANG LAL 189 IC 153-  
13 E L. 68-42 PLR 208-AIR 1910 Lah. 279

—*Joint debt*—*Assignment of part of debt*—*Suit by assignee for the part assigned to him*—*Maintainability*

A suit for a portion of a debt jointly owned by various persons is not maintainable. It makes no difference that the plaintiff became a joint owner of the debt by assignment, and was not originally a joint owner. Such a distinction is obviously superficial (*Addison, J*) TLST RAM NARULA v. GIAN CHAND AMAR NATH 187 IC 507-12 RL 461-41 PLR 888-  
AIR 1940 Lah. 96.

—*Payment of debt to creditor by third person on behalf of debtor*—*Suit by creditor against debtor for same debt*—*Decree against debtor*—*Debtor compelled to pay amount by legal process*—*Suit by debtor to recover amount*—*Maintainability*

If money has been obtained as the result of a decree between the parties, if such be not a decree, then a subsequent suit to ask that money cannot succeed. Considerations would arise if the parties were compromised and the compromise had been induced by the fraud of the person who obtained the benefit under the compromise. In such case the compromise could be set aside and the decree based upon it. Where C is paid his dues on hand-note by B on behalf of A, the executant of the hand note but in spite of the payment, C brings recovery of the same money paid against A, whose defence is that he has already paid by legal process to pay cannot subsequently bring recovery of the money paid (*C J and Fazi Ali, J*) BANSKOPAN RAM 5 BR 858-13 RP 126-  
AIR 1940 Pat 1.

—*Place of re-payment*—*Negotiable instrument* 1938 Dig. Col 622 DALSUKH NATHMAL v. LAL 1 LR (1910)

**DECREE**—Adjustment and satisfaction—Decree for specific amount as against two persons and for costs as against those and another—Receipt of amounts towards decree—If goes towards reduction of costs also or only amount of decree without costs—Rule—Right of decree-holder  
See C P CODE, O 21, R 2

50 L W. 908

— *Amendment ex parte, of orders*—If permissible  
Once having passed an order, which is also carried  
out, the officer passing the order, is incompetent to  
amend his own order. It is not open to a Court to alter  
*ex parte* its own previous order (*Harper, S.M. and*  
*Saith, J.A.*)

—Ass  
in appeal.

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the decree  
of a decree  
decree pass  
RAM KUM

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ministerial act. As U. S. Code, provides that the decree shall bear the date on which it is pronounced, the decree must in the eye of the law be presumed to have come into existence on the

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—Attachment and sale of—What passes—Purchase of original decree after confirmation and variation in appeal—Rights of purchaser—Right to benefit of variation—Mortgage—Rule of—Limitations.

It is evident that when a person purchases a decree at a sale in execution, he in fact purchases the right

cession receives further validity as a result of the admission. The purchaser of the decree cannot, however, be entitled to the benefit of any transfer to the decree made by the appellant after the date of the decree of appeal. (*Harpur v. Jageshwar*)

—Constr  
ment.

\* Court can look to the terms of the judgment. (Mitter)

**DECREE.**

and Lodge, JJ) RAJENDRA KISHORE BASU ROY :  
KUMAR PROMOTHA NATH ROY. 72 C L J. 49

—Construction—Charge decree—Suit for possession by vendee—Decree declaring charge on property for unpaid purchase money in favour of defendant and directing plaintiff to pay unpaid purchase money to defendant within time fixed—In default vendor given right to bring property for sale—If personal decree against vendee—Vendor's right to proceed against other property of vendee without getting personal decree afresh. See C. P. CODE, O. 34, R. 4 42 Bom L.R. 592.

ts—Absence of  
friend—Liability  
'5 MULCHAND  
'=12 E.B. 226.  
session of land  
—judgment debtor not ordered to remove structures  
decreet-  
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session  
was as  
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suit by

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ie decree.  
(Mutter  
RAWSAN  
LC 71-34

—Construction—Installment decree—Charge on immoveable property with right to recover amount out of property charged in case of default in payment of instalment—If money decree—Personal liability of defendant—If and when arises. See REGISTRATION ACT, S 17 (1) (e). 41 Bom L R 1113

Meaning of—Right of respondent to costs of appeal.  
See 1939 Dig. Col. 495 YADAV VISHWANATH v. B 298.  
costs?  
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ude of

appear separately, all the defendants are entitled to their costs separately under such an order. Both in the mofussil and on the appellate side of the Bombay High

## DECREE

Court, an order expressed in terms 'suit (or appeal) dismissed with costs' appellant is to pay all costs as taxed and no for all (*Braumont C* DHAR BALKRISHNA

Construction—Suit on promissory note—Attachment of land before judgment—Compromise decree creating charge on land and directing defendant to pay in instalments—Provision for sale of land through Court in default—Defendant exempted from personal liability—Effect of—Decree not registered and hence ineffective for charge—Execution by attachment and sale of land—Permissibility

In a suit on a promissory note, certain land was attached before judgment. Later there was a compromise decree by which the defendant was to pay the plaintiff

should recover the whole of the amount due by sale through Court of the land charged. The decree further provided defendant was not personally liable for the amount was not registered as required by S Registration Act, and hence was inadequate for the purpose of reading it as a charge on land.

Held, (1) that though the decree was enforced as a mortgage decree, by rea-

## DECREE

there is no decree which can be executed by the parties

BHINI MAL MURARI LAL v KUNDAN LAL

188 I C 614 = 12 B A 426 = A I R 1940 All 107.

Right to execute—*Benami* decree—Real owner's right to execute See C P CODE, S 2 (3) AND O 21, R<sup>2</sup> 10 21 Pat LT 146

Setting aside—Effect—Suit as against A, B and C dismissed but decreed against D *ex parte*—Retrial ordered on motion of D—A, B and C not parties to motion—Suit decreed against all on retrial—Decree, if binding on A, B and C

A suit for rent was dismissed as against A, B and C. As D had not filed a written statement the suit was decreed as against him *ex parte*. From this *ex parte* decree D filed a motion for setting aside A, B and C's *ex parte* decree.

Effect of—If forms root of title—If can

18 Mys LJ 36

and—Falsity of claim—If and metric and foreign judgments

cannot be reopened where the judgment had been given and it is found to be false by the plaintiff. That means that the adjudication was based on perjured evidence the fact a false one. The principle which is the cardinal principle of law would then have no application to a domestic judgment falsity of the material facts only in a

ability of final decree

Where an appeal is brought from a preliminary decree before the final decree is passed, such appeal is competent.

limited class of cases, namely, where the judgment was an *ex parte* one, where no summons had been served and the direct proof falls short of actual suppression of summons. If the claim on which the decree was based was that would be the case.

## DECREE

wider in terms than what would be applicable to domestic judgments. The rule of *res judicata* cannot be invoked in the case of a foreign judgment as it is regarded not *qua* judgment but only as a jurat act by which an independent obligation is created. This fact distinguishes a foreign judgment from a domestic one and pre-

—*Setting aside—Fraud—Nature of proof*

A plaintiff is not entitled to have a decree against him set aside on the ground that it had been fraudulently obtained merely by reason of the fact that the

—*Sitting aside—Fraud—Non service of summons*

Mere non-service of summons is in the absence of fraud not sufficient to support a subsequent suit to set aside an *ex parte* decree (*Khundkar, J*) RAMESH CHANDRA DAS v NATIONAL TOBACCO CO OF INDIA LTD 44 CWN 999=AIR 1910 Cal 538

—*Setting aside—Fraud—Proof required—Suppression and non service of summons—Effect of.*

case of *ex parte* decrees when the defendant had never

from placing his case before the Court. Mere non-

the same in the case of decrees where the appeared in the earlier must be one extraneous

Dig, Col 497 MAHANI CHINERA v RAMJAN ALI 180 IC 218=13 RP 185=6 BR 920=21 Pat LT 1030=AIR 1940 Pat 243

## DEED

—*Validity—Decree against major treating him as minor—If nullity* See LIMITATION ACT, ART 95.

21 Pat LT 269  
—*Validity—Estate of plaintiff and defendant in hands of common manager of encumbered estates—Both plaintiff and defendant represented*  
—*Effect on validity of decree—*

t an elementary rule of procedure individual even in different capacity both a plaintiff and defendant to me action. But it is only a rule of procedure and not a rule of jurisdiction. This, however, does not apply to the case of a suit by a person against another, both of whose estates are placed in the hands of a common manager under the Chota Nagpur Encumbered Estates Act, and the decree in such a suit can not be said to be a nullity on that account. The fact that the same manager represents both the

there is no suggestion of any prejudice being caused to any of the parties (*Fazl Ali and Dhavle JJ*) LAL TIRATHNATH SAHI DEO v LAL MIRTUNJOYA NATH SAHI DEO 6 BR 98=185 IC 79=12 RP 295=21 Pat LT 645=AIR 1940 Pat 153.

—*Validity—Fraud—Party kept in ignorance about proceedings which end in decree* See 1939 Dig, Col

on proceedings of Court See 1939 Dig Col 495. AIR 1940 Pat 59

UDRA BAI v SHRI DEO

I LR (1940) Nag 94.

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litigation meaning and one for your party and

upon the transfer of him a present words of transfer right on the

—*Construction—Annuity—Annuity in favour of daughter and her lineal descendants—Some of lineal descendants dying without leaving lineal descendants—*

## DEED.

Their shares, if revert to grantor. See 1939 Dig., Col. 500. JYOTISH CHANDRA CHAUDHURY v. PROFULLA CHANDRA SANYAL 187 I.C. 33.

A.I.:

—Construction—Assignment of  
—If passes property itself—Mining  
of income absolutely and for ever—*See*  
itself.

It is well settled in the case of bequests that a gift of

*Chatterji, J.*—It is an accepted rule of construction that an absolute grant of the income of an estate passes the estate itself. In the case of a mining lease if the income of such property is assigned absolutely and for ever, nothing is left to the assignor. (*East of*) JYOTI PRASAD SINGH DEO SEDDON. 19 Pat. 433.

—Construction—Boundaries and ar  
ence between—Rule. See 1939 Dig., Col  
ALI v. AMIR ALI MEAH, 185 I.C. 641.

—Construction—Boundaries and are  
pancy—Which to prevail. See 1939 Dig.  
RAJLU NAIDU v. M. F. R. MALAK. 18

—Construction—Charge.

No particular form of words is necessary for the

—Construction—Charge—Document by manager of  
Bank for proper discharge of duties

missal death or otherwise, the Bank should reconvey  
the house to him.

S. OMITANE CHATTERJI.  
6 B.E. 301—12 R

—Construction—Dat:  
Col 500. BAKER ALI v.

## DEED

—Construction—Duty of Court—Opinion of attest-  
ing witness—Value

187 I.C. 33 = 13 B.A. 120  
1940 A.W.R. (H.O.) 500 = A.I.R. 1940 All. 353.

of title  
ards on behalf of  
he vendor hereby  
premises hereby  
to and upon and  
profits received  
by the said A.  
in trust for him  
and every person  
for him will, at the cost of  
ame, execute and do every  
y for the further or more  
perfectly assuring the said premises to the purchasers,  
their heirs or assigns as by them shall be reasonably  
regulated". It was held that the words constitute an  
express covenant of warranty of title in the deed itself.  
MANSINGH v.  
B (C.O.) 471 =  
1940 O.A. 1060  
ction—If can be

Form of transaction—If can be  
ible, as a matter of construction,  
of a transaction contained in a  
stance and give effect to it ac-  
cording to the intention of the parties, but it is a differ-  
ent thing to ignore the form in which the parties have

and his wife till death, and thereafter to go to named  
person absolutely—Declaration that he will not incur  
any debts thereafter—If will or gift See 1939 Dig.,  
VEERABHADRAYYA v. SEETHAMMA.  
A.I.R. 1940 Mad. 236.

—Construction—Intention—How to be gathered—  
Court—Language of deed to be taken as a

the Court must gather the

## DEED.

NARAYANA v. RAMACHANDRA RAO.

18 Mys L J 196 = 45 Mys. H.C.R. 109.

—Construction—Intention of parties—Ascertainment—Surrounding circumstances—Law governing parties—Value of. See 1939 Dig. Col 501. MAHA-RAJAH OF VENKATAGIRI v. RAJA RAJESWARA RAO.

189 I C 123 = 13 B M. 144.

—Construction—Lease or easement—Kabuliat giving right of passage over land

The difference between a lease and an easement is well defined. By a lease the owner of land retains his

## DEED

In order to ascertain the real character of a document one has to look to the terms of the deed, and the description of the document given by the executant cannot be an infallible guide (*Iqbal Ahmad and Verma, J.J.*) RAMMAN LAL v. RAGHUNATH SHANKAR

1910 O A 1167 = 1910 A W.R. (H.C.) 572

—Construction—Recitals—Value—Old transaction. See MORTGAGE—RECITALS 1910 A L J. 479.

—Construction—Rules as to—Intention of party.

It is entirely wrong for a Court to interpret a document in a particular way because some one taking under it

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therefore, not a lease, but merely seeks to create an easement in favour of the grantee. (*Sen, J.*) HARAN CHANDRA MUKHO PADHYA v. SHYAMA CHARAN CHAKRABARTY

180 I C 483 = 13 E C 166 = 71 C L J. 248 = A I R 1940 Cal 447

—Construction—Lease or sale—Coal mining lease and sale of coal land—Distinction

One of the essential points of distinction between a mining lease and a sale of coal land is that while in a mining lease the lessor has the right of reversion, there is no such right of reversion in a sale. Another point

It is a settled rule of construction that if they are words in a document, which adequately and with sufficient certainty define the interest that is to be conveyed, the addition of an erroneous description would not vitiate it (*Mukherjee, J.*) KHULNA LOAN CO., LTD. v. TARAPADA BOSE

44 O W N 783

—Construction—Rules—Liberal construction

Deeds and contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be regarded so much as the real meaning of the parties which the transaction discloses.

RAJ v. GORURAM

1940 Mar L E 74 (Civ)

—Sale-deed—Sale of zamindari decree for costs and mesne costs and mesne profits—If

ency of a suit by a lady for ndary property, the lady en-  
pertous agreement with a  
latter person whereby it was agreed that the  
latter should bear all the costs of the litigation  
and should receive in return half of the zamindari  
property. The lady got a decree for the  
zamindari property with mesne profits and costs.  
In accordance with the agreement, a sale-deed  
was executed which provided that "the half share  
in the zamindari together with all zamindari  
rights appertaining thereto masewa the decree  
for costs and mesne profits have been transferred".

implied  
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## WORDS TO BE GIVEN EFFECT TO.

It is a well recognized rule of construction of documents that they must be construed as a whole, that every part of the documents must receive attention and that the intention should be gathered from the whole context of the instrument so as to make one entire and consistent construction of the whole (*Nyoga, J.*) GANPATDAS v. HARIVALLABH 1940 N L J 601

—Construction—Principles—Intention of parties—Duty of Court to ascertain—Reference to precedents—Value of.

A I R 1940 Pat. 512.

—Construction—Purusha Santhathi—Hindu Imparible estate—Settlement deed—Provision for payment of maintenance allowance to junior members for life and after their death to their Purusha Santhathi—Illegitimate sons—If entitled to claim as Purusha

—Construction—Sale of share in parent 'patti'—If entails transfer of proportionate share of 'shamilat patti'.

Where a sale deed transferring the half share of the vendors stated that they were transferring the half share in the 'patti' with all the external and internal rights

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## DEED.

1940 O A 831-1940 E D 415-13 E O. 158=

## DEFENCE OF INDIA RULES (1939), R. 34.

unless they conflicted with Hindu or Mahomedan

would purchase for same amount—Greater part of property left in hands of vendor for rent—Inference of mortgage—If justified See 1939 Dig., Col 503. GULABCHAND RAYCHAND & NARAYAN MOTIRAM.

186 I C 307=12 E B 317=A I R 1940 Bom 1.

Construction—Settlement or will

If a document executed by a father in favour of his

Material alteration—What amounts to. See 1939 Dig., Col. 505 JANARDAN PAKIDA v PRANDHAN DAS. 190 I C. 377=7 E B. 20-13 E P. 193=

A I R 1940 Pat. 245

Recitals—Value of—If prima facie evidence against executant—Execution of deed by guardian on behalf of minor—Effect of.

Recitals in a deed are prima facie evidence against

504 MAHARAJAH OF VENKATAGIRI v. RAJA RAJESWARA RAO 189 I C 123=13 E M. 144

Material alteration—

basis of suit—Suit, if liable

Where the alteration which has been made by the plaintiff on the basis of which the suit has been entered relating to repayment, dismissed. (Din Mahomed, RAM

42 P L R 11

Material alteration—Effect—Document originally constituting conditional promise to pay—Alteration by plaintiff by cutting off part and making it unconditional

decree, but no sale has resulted in execution thereof, the Court may reform the mortgage deed and the

## DEFENCE OF INDIA ORDINANCE (V OF 1939), R 34 (6)—Scope—Profiteering—If offence—Prejudicial act—If includes profiteering

finance is not intended

19), R 34 (6)  
considerations,  
under  
be



## DEKCHAN AGRI. RELIEF ACT (1879). S. 22

Charge of selling  
above the price  
to be proved for

of the Defence of India  
Government Notifica-  
Department of having  
price more than 20 per  
—9-1939 the prose-

—R 34 (6) (c)—Speech, if amounts to 'prejudicial act'—Intention—How to be ascertained

cutors, in order to make out the offence, have to prove (1) that they purchased the article at a particular price from the accused, (2) the price that prevailed on

—R 34 (6), (g) and (h)—Scope  
Trader increasing price of dhoties  
Offence—Clothing not notified as essen  
Effect of

The increase by a merchant or trade dhoties by about 10 per cent is not an act likely to cause

agriculturists — Provision for payment of price in  
vender for recovery of  
rms of agreement—Ad-

commodity within the meaning of R. 34 (3). Hence the increasing of the price of dhoties cannot be held to be an offence under R. 34 (6) (*Agarwal v. State of Punjab*).  
**KEDIA v. EMPEROR** 187 I. A. 111 (1914) 111 I. A. 111 (1914)

the lands the agriculturalists are not entitled to adduce oral evidence under S. 10-A of the Dikkhan Agricultural

KEDIA v. EMPEROR 187 I  
21 Pat L T 273=41 C L  
1940 P W N 458=

—R 38 (1) (a)—Charge of  
sedition—Cognisance on report of  
competency of Court to take—Compla-  
cency of Provincial Government  
P. Code, S. 196—Scope

cognizance of the offence on the report in writing of a public servant as required by R 130 (1) of the Rules. It is not necessary that a complaint should be made by order of or under the authority of the Provincial Government as required by S. 196, Cr P. Code (*Lakshmana Rao, J.*) RAJANUJA AIYANAR, *In re*

1940 M W N. 1241-52 L W 773=  
(1940) 2 M.L.J. 830.

**B—Applicability**—Suit on mortgage—not agriculturist at time of preliminary request acquisition of status before final right to claim relief.

In order that a suit may be one against an agriculturist it is not necessary that he should be one when the suit is instituted. It is sufficient if he is an agriculturist at any time during the pendency of the suit when the question of status falls to be determined. Therefore the defendant in a suit on a mortgage who was not an agriculturist on the date of the Preliminary decree, but who

**DEKKHAN AGRI RELIEF ACT (1879), S 63 A.**

Under S 22 of the Dekkhan Agriculturists' Relief Act, the material date for the determination of the

**DIVORCE ACT (1869), S 10**

A person cannot be said to reside at a place where he spends only a day or two when he has got a fixed place

**DIVORCE** See also **INDIAN AND COLONIAL DIVORCE JURISDICTION ACT**

—Alimony—Absence of *dum sola et casta* clause in the decree—Subsequent unchastity—If a ground for varying decree See 1939 Dig Col 507 CHANDLER v CHANDLER

ILR (1939) All 819—  
185 IC 831—12 RA 358

—Costs of wife for defence—Husband, if should pay for—Default in payment—Procedure

Where a husband seeks dissolution of the marriage on the ground of the wife's adultery he is not ordinarily be allowed costs from her to defend herself upon the special reasons to the contrary such payment is made but the

—Subsequent petition for dissolution of marriage on same grounds—Competency—Fresh evidence of adultery alone in subsequent petition—Sufficiency for decreeing dissolution

A wife petitioning for dissolution of marriage is not in the absence of a fresh matrimonial offence, entitled to a decree for dissolution of marriage upon precisely the same grounds as those on which she obtained a judicial separation previously. The Courts cannot possibly countenance a petitioner who had material for dissolution, but was not able to prove it.

—*Order of the Court*—Practice

In cases coming under the Indian and Colonial Divorce Jurisdiction Act when an order is made for the custody of a minor child the order is not to be expressly limited in point of time to any particular period (*Sakari J*). DORIS ROYSTON v FREDERICK ROYSTON 1940 Rang LR 674—AIR 1940 Rang 303  
**DIVORCE ACT (VI OF 1869), S 3 (2) (a) and (1) (d)**—District Judge—Meaning of—Petition under S 32 of the Act—Jurisdiction

MANJULA BAI v JANAJI RAO

ILR (1940) Mad 319—1940 M WN 601—  
51 L W 142—AIR 1940 Mad 510—  
(1940) 1 B L J 210

—S 7—Scope—Marriage under Buddhist law—Parties subsequently becoming Christians—Power of Court to grant relief.

A marriage to be recognized as such by the Courts of a Christian country must be a voluntary union for life of one man with one woman to the exclusion of all

—S 3 (3)—Jurisdiction—Parties belonging to and marrying at place within jurisdiction of Court at Mangalore—Last place of residence together—Husband leaving for Rangoon, but having no fixed residence there though employed there—Jurisdiction of Mangalore Court to entertain application by wife

*Nya Bu and Dunkley JJ* MAU v KIN RAW GAM  
1940 Rang LR 417—186 IC 775—12 ER 288—  
AIR 1940 Rang 67 (S B)

—S 10—Hindu marrying Christian wife—Second marriage with Hindu during subsistence of first marriage—If a ground for divorce

## DIVORCE ACT (1869), S 10

Where a Hindu after marrying a Christian wife and while that Christian wife is living, marries a Hindu wife

(Stone C J Gruer and Bose, JJ) MRS  
v A S CHITNAVIS 189 IC 432=  
1940 N L J 391=AIR 1940 Na  
S 10 and Special Marriage Act  
solution—Order for—Proof of marriage  
precedent

—Ss. 19 and 10—Marriage between Mahomedan  
husband and Roman Catholic wife—Wife's consent  
obtained by fraud—Power of Court to annul marriage  
See 1939 Dig Col 509 TO AYKUT v MO AYKUT  
186 IC 593=12 EC 486=AIR 1940 Na 75

—S 36—Net income—Meaning See  
Col 509 A W LOBO v J A LOBO 18. 14

## EASEMENTS ACT (1882), S 15

wants the whole wall to be treated as a joint wall must  
establish that there was a party wall in the beginning

AIR 1940 BOM 103.  
ht—Enjoyment for lesser than statu  
confer right of action against tres-  
passing, Col 512 MADAROO KHAN v  
AIR 1940 Oudh 111

aim—Assertion of personal claim  
precludes claim for easement See  
RAJLU NAIDU v M E K MALAK  
186 IC 155=12 EC 187

—Right of way—Long user—Presumption of legal  
origin for the right See 1939 Dig Col 512 RAM  
KALI v MUNNA LAL I LR (1939) All 754

—Right of way—Public pathway—Dedication—  
See

For the acquisition of an easement along with other  
things it is essential that the dominant owner must be a  
fixed or ascertained person or body of persons capable of  
acquiring the right Where the evidence shows that  
Sindhis in general had been making use of the land in  
question *And* that this could not establish a right of

12 ER 208.  
—S 4—Right of way—Tenant of one land—If can  
acquire upon another land of his own See 1939 Dig  
Col 513 TAN SIT SHAN v U PO NYUN  
1940 Rang LR 93=185 IC 605=12 ER 208

—S 13—Easement of necessity—What is See  
1939 Dig Col 513

(IV) (C) AND (D) (1940) 2 M L J 655  
—Extinction—Unity of possession See 1939 Dig  
Col 510 TAN SIT SHAN v U PO NYUN.

that up to that time it must have been enjoyed for  
20 years and without interruption The period of enjoy-  
ment up to within two years of the suit need not be a

full height is not proved to be joint The part

## EASEMENTS ACT (1882), S. 15.

—S 15—Right of way—Long

See 1939 Dig., Col 514 RAILU

MALAK 186 I.C.

—S 18—Applicability—Right

at a particular place—Owners of ca

## ELECTRICITY ACT (1910), S 26

nt character—Sinking

omound wall can be

variant character within

J) JAGAT SINGH v.

186 I.C. 890=

12 K.L. 434=A.I.R. 1940 Lah 18.

v. Lonsdale—Ap-

actual damage—this for injunction—cause of action—  
Relief—Award of damages.

Under S 33 of the Easements Act, any act of the defendant which affects the evidence enough to sustain an action by the plaintiff does not suffer actual damage there is a wrongful act for which an action

is based upon the principle that equity regards all that as done which ought to have been done, and if the defendant in an

determined the doctrine assistance in the case of a ere can be no valid agree-

J) HARI PADA MUK-

O. 81=71 O.L.J. 144=

A.I.R. 1940 Cal. 251.

of plaintiff.

fail until the plaintiff

within 12 years of the

SERAJUDDIN SARDAR.

A.I.R. 1940 Cal. 65.

—S 52—Permission given to local body to occupy

SINGH v DISTRICT BOARD, AMRITSAR.

186 I.C. 890=12 R.L. 434=A.I.R. 1940 Lah. 18.

—S 60—Licensee building works of permanent nature—Licensor's right to revoke license. See LICENSE—REVOCATION. A.I.R. 1940 Lah 509.

—S 60—Licensee erecting works of permanent nature—Grantor's right to recover land on payment of compensation.

Where a person who has given his land for certain purpose has given him that he would not claim the land so long as required for that purpose and on acting the licensee has erected works of permanent nature the grantor of the license is not entitled to recover the land even on payment of compensation because S. 60 does not recognize any such exception. (Bhida, J.) JAGAT SINGH v DISTRICT BOARD, AMRITSAR.

186 I.C. 890=12 R.L. 434=A.I.R. 1940 Lah 18.

charge over the property in favour of the debenture holders, it was held that the deed so far as it intended to operate as a transfer of the properties to the trustees was void in view of the provisions of S. 9 (2) of the Electricity Act and that it was similarly void in so far as it purported to create a mortgage but that it was valid in so far as it purported to create a charge which entitled the debenture-holders to rank as secured creditors.

—S. 26 (5) and R. 31 (1)—Relative scope—If conflict with each other. See 1939 Dig., Col 516 BHAGVATI v. ENFEROR.

185 I.C. 506=

12 B.R. 251=41 Cr.L.J.

ELECTRICITY ACT (1910), S 44

—S 44 (b)—Construction—Works laid or connected—If to be also works belonging to licensee See 1939 Dig, Col 516 BHAGVATI v EMPEROR

185 IC 506—12 B B 251—41 Cr L J 188  
ELECTRICITY RULES (1937), R 123—Who is liable to punishment under—Workman or supervisor See 1939 Dig, Col 517 HANS HOTZ v EMPEROR

ILR (1940) All 67—12 B A 370—41 Cr L J 230  
—185 IC 709—AIR 1940 All 5,

hire in a country beyond the sea, he commits an offence punishable under S 30 (3) read with S 25 (2) (b) of the Emigration Act Assistance does not mean merely either financial assistance or entering into an agreement to work for hire (Lakshmana Rao J)

entry of name as transferee and to be included in list of contributories—Sustainability—Right to rectification See 1939 Dig, Col 519 GARLAND PETROLEUM CO MADRAS LTD In the matter of

EVIDENCE—

Sedition case S

—NOTES OF SP

—Admissibility—Test—Relevant point of time

The relevant point of time in the proceedings at which the condition of admissibility must be fulfilled is the time when it has to be admitted by the Court before which the evidence is produced and relied on and not the moment when the case is decided (Gruer and Furank JJ)

—Value of.

A person brought a suit for establishing that he was the adopted son of a dismissed Sirdar and as such entitled to succeed to the Sirdarship In evidence documents coming from official sources recording statements

in connexion with a matter of local interest, viz the appointment of a new Sirdar

Held, that the documents carried greatest possible weight and could not be dismissed as mere self assertions (Lord Russell of Killowen) ARJUNO NAIKO

EVIDENCE

it would be an error to segregate the incidents and test their veracity in isolation (Mr Jayakar) NAND KISH WAR BUX v GOPAL BUX 188 IC 1—12 B P C 187—6 B E 636—21 Pat LT 519—

—Burden of proof—Omission of party to produce Dig, Col 520.

F STATE  
—12 B L 340  
ation of decree

one was a personal

Where certain properties are sold in execution of a decree against an executor and the sale is subsequently attacked on the ground that the decrees are the personal decrees of the executor the onus is on the person who

In the matter of caste, certificates containing a person's own statement as to his caste to the officials concerned by whom they were issued and who had no need

med, JJ) SHARIFA BEGAM v COURT OF WARDS AIR 1940 Lah 475

—Commission evidence—Expunging portions of—Powers of Court

It is possible that scandalous and indecent matter might be expunged by the trial Court from the evidence proves to be irrelevant in the judgment in the en recorded on commission It must remain as such on the record If it is irrelevant or inadmissible, it will not aid in the determination of the case and should be neglected (Davies) CHOCHA LAL v BHANWAR LAL MATHUR

1910 A M L J 4  
—Decisions in—Value of in civil

Civil Court to rely on decisions in deciding questions of title in civil suits (Agarwala and Meredith, JJ) HARIHAR PRASAD SINGH v JANAK DULARI KUER 21 Pat LT 873

—Cross examination of some witness on behalf of different parties—Damaging statement against one party

no the witness with refer (Rachhpal Singh and AP SINGH v. BAISNI IC 757—13 B A 119—)—AIR 1940 All 353

## EVIDENCE

## —Declaratory suit

In a declaratory suit the plaintiff must rely on the strength of his own case. But the strength of the plaintiff's case must always be determined to a certain extent on the case of the defendant. If the defendant produces in Court what is plainly a false claim to the property in dispute, then if the plaintiff is able to produce any reasonable case it should be preferred to that of the defendant. (*Davies*) GULAB CHAND v BIRMA

1940 A M L J 36

## —Judgments—Binding character—Persons not parties to suit

Judgment in a redemption suit is not person who was not a party to that suit. GANESH PRASAD v DWARKA PRASAD

1

## —Patta—If document of title—Government—Value of See MADR

पट्टा का दस्तावेज नहीं है  
This is a document of title does not

In receiving illegal gratification he cannot be punished merely on suspicion and the charge has to be substantiated by reliable evidence. (*Harper S M and Sathe, J M*) SRI RAM MISRA v EMPEROR

1940 R D 564

when none but the employees could be witnesses to transaction in dispute. (*Varma and Manohar, J J*) PEOPLES CO-OPERATIVE BANK LTD, P v SHYAM NARAIN

6 B E 767-189 I C 200

13 R P 62-A I E 1940 Pat 629

## —Witness—Value of testimony—Nervousness in the box—If can affect

A witness's evidence should not be rejected merely

## EVIDENCE ACT (1972), B 13

—S 9—Letting value of land—Evidence afforded by return or assessment of neighbouring premises—Admissibility—Calcutta Municipal Act S 127

A I R 1940 Cal 47

—S 10—Scope of—Conspiracy—Nature of evidence to be let in See 1939 Dig, Col 523 EMPEROR v BHOLA NATH

I L R, (1939) All 736

—S 10—Statement by co conspirator after completion of conspiracy—Admissibility

The words of S 10 are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to

CHETTIAR v ZAMINDAR  
A I E 1940 Mad 273  
nd 147—First information

besides its use as a  
e of evidence under  
Act becomes when  
the meaning of S 11  
tains some evidential  
against by the author  
thereof (*Mahomed Ahmad Khan C J and Birdi, J*)  
RAISUDDIN v GOVERNMENT OF BHOPAL

190 I C 322

—S 13—Custom of sale by ryots of houses—Copies of sale deeds—Admissibility

In a village  
houses in  
prove the  
n evidence

—S 13—Judgment not later parties—Admissibility

A judgment in a previous suit may be relevant under S 13 of the Evidence Act for establishing a particular

**ELECTRICITY ACT (1910), S 44.**

—S. 44 (b)—Construction—Works laid or con-

**EVIDENCE.**

It would be an error to segregate the incidents and test

(*At. In. bar.*) **NAND KISH**

188 I O 1 =

1 Pat L T. 519 =

940 O L E. 331 =

1910 O A 558 =

40 M.W.N. 922 =

40 P C 93 (P.O.).

party to produce

best evidence—Effect See 1939 Dig, Col 520,

**MAHOMED HUSSAIN v. SECRETARY OF STATE**

186 I O 45 = 12 E L 340

—Burden of proof—Sale in execution of decree

against executor—Allegation that decree was a personal

one

Where certain properties are sold in execution of a

**EMIGRATION ACT (VII OF 1922), Ss 25 (2) (b)**

and 30 (3)—Applicability—"Assurance"—Meaning of.

Where a person secures steamer tickets for certain

labourers to enable them to depart by land out of British

India so as to depart for the purpose of working for

hire in a country beyond the sea, he commits an

offence punishable under S 30 (3) read with S 25 (2)

(*At. In. bar.*)

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entry of name as transferee and to be included in list of

contributories—Sustainability—Right to rectification.

See 1939 Dig, Col 519 **GARLAND PETROLEUM CO**

**MADRAS, LTD.**

(*At. In. bar.*)

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**EVIDENCE—**

Sedition case. 5

—NOTES OF SP

—Admissibility—1 est—Relevant point of time

(*At. In. bar.*)

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**ments—Value of.**

A person brought a suit for establishing that he was

the adopted son of a dismissed Sirdar and as such entitled

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Held, that the documents carried greatest possible

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—Appreciation—Version spread over several consecutive stages.

When dealing with a version spread over several con-

(*At. In. bar.*)

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recorded on commission it must remain as such on the record If it is

irrelevant or inadmissible, it will not aid in the determination of the case and should be neglected (*Direct*)

**CHOGA LAL v. BHANWAR LAL MATHUR**

1910 A M L J. 4.

—Criminal cases—Decisions in—Value of in civil

is wrong for a Civil Court to rely on decisions in

criminal cases when deciding questions of title in civil

(*Agarwals and Meredith, JJ*) **HARIHAR**

**AD SINGH v. JANAK DULARI KUER.**

21 Pat L T. 873

(*At. In. bar.*)

(*At. In. bar.*)

(*At. In. bar.*)

(*At. In. bar.*)

(*At. In. bar.*)

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(*At. In. bar.*)

(*At. In. bar.*)

(*At. In. bar.*)

a statement damaging to the case of one of the parties

who had already cross-examined him, then, the latter

party is entitled to cross-examine the witness with refer-

(*Rachpal Singh and*

**AP SINGH v. BAISAI**

O 757 = 13 E A 119 =

A I E. 1910 AU 353.

## EVIDENCE

## —Declaratory suit

In a declaratory suit the plaintiff must rely on the strength of his own case. But the strength of the plaintiff's case must always be determined to a certain extent on the case of the defendant. If the defendant produces in Court what is plainly a false claim to the property in dispute, then if the plaintiff is able to produce any reasonable case it should be preferred to that of the defendant. (*Davis*) GULAB CHAND v BIRMA

1940 A M L J 36

## —Judgments—Binding character—Persons not parties to suit

proof of contents

## —Registration Endorsement—If proof

A Court is not bound to treat the registr

## box—If can affect.

A witness's evidence should not be rejected merely because he appeared to be nervous while in the box (*Thom, C J and Ganga Nath, J*) SANTU v. MAIKU  
187 I C 747—12 R A 565—  
1940 A W E (H C) 67—1940 A L J. 26—  
A I R 1940 All 175

EVIDENCE ACT (I OF 1872) S 3—Proof of fact  
—Duty of Court See 1939 Dig. Col 522 DUKHARAM  
NATH ZUTSHI v COMMERCIAL CREDIT CORPORATION,  
LTD 15 Luck 191—A I R 1940 Oudh 35

Y D. 1940—37

## EVIDENCE ACT (1872), S 13

—S 9—Letting value of land—Evidence afforded by return or assessment of neighbouring premises—Admissibility—Calcutta Municipal Act, S 127 A I R 1940 Cal 47

—S 10—Scope of—Conspiracy—Nature of evidence to be let in See 1939 Dig. Col 523 EMPEROR v BHOLA NATH I L R, (1939) AIL 736

—S 10—Statement by co conspirator after completion of conspiracy—Admissibility

The words of S 10 are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to

—S 13—Judgment not inter partes—Admissi

## —S 13—Judgment not inter partes—Admissi

A judgment in a previous suit may be relevant under S 13 of the Evidence Act for establishing a particular transaction, but the findings of fact and reasons upon which the judgment is founded are no part of the transaction and cannot be relevant in a subsequent suit. A I R 1937 Lah 437, Ref to (*Abdul Rashid, J*)  
MAHOMED SULEMAN v RADRUDDIN 190 I C 689—  
42 P L E 217—A I R 1940 Lah.

—S 13—Judicial  
tions. See 1939 D g. Col 524 MAHADEO v  
WAR PRASAD. 188



## EVIDENCE ACT (1872), S 13

—S 13—Map prepared in previous suit—Admissibility

A map prepared in a previous suit is not relevant under S 13 of the Evidence Act in a subsequent suit, when the land in dispute in the two suits is different (*Abdul Rashid, J*) MAHOMAD SULEMAN v BAD RUDDIN 190 IC 689=42 PLR 247= AIR 1940 Lah 309

—S 13—Permanent lease—Proof—Documents of sub leases—Admissibility

Documents of transfers and sub leases 1879, in all of which there is an assertion is permanent, is admissible in evidence under the Evidence Act if lease is permanent necessarily implies the (*Henderson, J*) SU

v NAGENDRABALA DAS 190 IC 622= 13 RC 182=71 CLJ 209= AIR 1940 Cal 593

—S 13—Prior proceedings on the question of existence of right to office or property—Relevancy as transaction by which right was recognised—Practice—Official records—Late production—Propriety of rejection

The karnam occupies his office not by hereditary or

holder of an office of karnam claimed certain properties from alienees and the defence was that the properties were enfranchised mirasi service inam lands and the alienations were valid as the holder was entitled to deal with them as absolute owner as they had been enfranchised in favour of the holder of the office of the karnam. One of the defendants, an alienee, was in possession of certain documents even prior litigation between was claiming to be entitled the office jointly with it decided that the alienor lands. These documents time only at the time of the hearing of the suit.

Held, that the previous proceedings on this question of the existence of the right to the office and property are very relevant as being transactions by which the right was recognised. When documents are official records of undoubted authority which may assist the Court not late (*Mo, J*)

AIR, 1940 Mad 540=(1940) 1 MLJ 302

GHOSH 710 LJ 604= AIR 1940 Cal 589

—S 13—Statement as to tenancy right in village by kulkarni—Admissibility

A statement of a kulkarni of a village as to the existence of a tenancy right in the village is admissible in evidence under S 13 (*Sir George Rankin*)

## EVIDENCE ACT (1872) S 18

SHANKARRAO v SAMBHU NATHU

190 IC 312=13 RPC 81=45 CWN 57= 1940 OLR 608= AIR 1940 PC 192(PC)

—S 13—'Transaction'—Document relating to property adjacent to suit land—Description as being situate in particular village—Admissibility. See 1939 Dig, Col 524 SEVUGAN CHETTIAR v ZAMINDAR OF SIVAGANGA AIR 1940 Mad 273,

—S 13 (b)—'Ascerted'—Meaning of—Verbal

12 RM 605  
ibility in proceed-  
CR P CODE,

1940 NLJ 31.

—S 15—Hearsay—Report of Naib Tahsildar—Admissibility

The report of a Naib Tahsildar which is based on the statements of unknown persons who happened to be present at the time of his inspection is purely a hearsay evidence and is not legally admissible (*Harper, J* and *Sathe, J*) BARU SINGH v SHADI

1940 RD 246(2)=1940 AWR (BR) 152.

—S 15—Hearsay evidence or evidence of an officer and not properly of Judge to point out See 1939 Dig, Col 524.

EMPEROR  
Kar 249=41 Cr LJ 28.

1939 Dig, Col 525 MAHADEO v DALESHWAR PRA SAD 186 IC 564=12 RA 415.

—S 17—Admissions in written statement—Admissibility as evidence against co defendant—Rule

Admissions of liability made by some of several defendants in their written statement in the suit will not be evidence against the other defendants who have no

—Ss 18 to 21—Admission—Statement by accused under S. 164, Cr. P. Code, or to Court admitting his presence at scene of murder at the commission of the crime—If confession—Admissibility

le by  
164  
Court  
at he  
order

took place, cannot be ruled out as inadmissible in evidence. It is admissible in evidence for

ALLAHWARAYO v EMPEROR

ILR (1939) Kar 800=187 IC 576= 12 RS 250=41 Cr LJ 477=

AIR 1940 Sind 53

—S 18—Admission in sale deed—If constituted mission by scribe—Admission made when interest of

## EVIDENCE ACT (1872), S 21.

scribe and his brother were joint—If binding on representatives of both

Where a sale deed executed by some of the co-sharers of the property was written by one S who also signed the deed for one of the executants and the deed recited the vendors' share as 3 annas and odd,

*Held*, that the recital was an admission by S that the vendors did, in fact own the share mentioned and that by virtue of S 18 of the Evidence Act the admission was binding not only on the representatives in interest of S but also on the representatives in interest of his brother as the admission was made at a time when the interest of S and his brother were joint (*B N Raw J*) BHUTNATH BANDOPADHYA v JAGAT TARINI DAS 71 C L J. 200

—Ss 21 and 34—Admission—Admissibility on behalf of person making it—Statement in zamindari papers—If essence on behalf of zamindar

Under S 21 of the Evidence Act . . . be proved by or on behalf of the person is relevant otherwise than as an admission in zamindari papers which are entered into account regularly kept in the course . . . relevant under S 34 of the Evidence Act Such statements can therefore be taken into account though they may be admissions on behalf of the zamindar (*Agarwala and Rowland JJ*) LALA RAJBALI LAL v PATTAPUR CO LTD 19 Pat 398—1940 P W N 498—A I R 1940 Pat 622

—S 21—Admission by son and mukhtar i am of party—Admissibility and value in subsequent proceedings

Where the son and mukhtar i am of a part admission before the partition officer, it is under S 21 of the Evidence Act in proceeding division of joint *sur* it would constitute a statement of evidence, but is not conclusive It would

—S 21—Admission—Effect on burden of proof See 1939 Dig, Col 525 DUKHARAM NATH v UTSHI v COMMERCIAL CREDIT CORPORATION LTD 15 Luck 191—A I R 1940 Oudh 35

—S 21—Admission—Effect on—Burden of proof

—S 21—Admission—Proof of—Rule as to

An admission may be proved as against the person who makes it or his representative in interest but it cannot be proved by or on behalf of the person who makes it or by his representative in interest This section is the affirmation of the well known rule that a man shall not be allowed to make evidence for himself (*Ranjitmal and Sukhdonarain, JJ*) BALKISHAN v MST JAWKI

—Ss 24 and 26—Coroners' Act, S 19—Statement—Admissibility at trial

The word "accused" in Ss 24 and 26 of the Evidence Act includes any person who subsequently becomes accused A person who is suspected of complicity in a murder and makes a confession before the coroner under S 19 of the Coroners' Act, is an accused

## EVIDENCE ACT (1872), S 26

person within the meaning of Ss 24 and 26 of the Evidence Act when he is later on charged with the murder or abetment of murder His confession would be admissible against him and against his co-accused if the requisites of an admissible confession are present, though it may be retracted later on (*Wadia, J*) EMPEROR v BHAGWANDAS BIESAR

42 Bom L R 938  
—S 24—Confession—Statement in that it was made under threat—Effect See 1939 Dig, Col 525, ABDUL SUBHAN v EMPEROR 12 RA 384—41 Cr L J 258—186 I C 192—A I R 1940 All 46

—S 24—Confession to be taken as whole—Scope of rule

In a case where there is evidence other than the confession of the accused, the Court is not bound to take the confession as a whole If it is satisfied that a . . . false, it may reject that part of the . . . evidence of the . . . hand, J) NIHAL 326—12 R L 27—41 Cr L J 676—42 P L R 1—A I R 1940 Lah 157.

—S 24—Person in authority—President of Village

42 P L R 711.  
—S 24—Retracted extra judicial confession—Admissibility—Value

12 R M 683—41 Cr L J 323—A I R 1940 Mad 136—(1940) 2 M L J 35

—Ss 25, 26 and 27—Confession—Meaning of, See 1939 Dig, Col 526 NARYANASWAMI v EMPEROR, 6 Cal L T 25 (P O)

—S 26—Appeals *ad litem*

A I R 1940 Lan 129 (I B J)

—S 26—Confession—Admissibility and use of—Rule that it should be taken as a whole—Circumstances to be considered as a whole

Where an accused confesses to having caused the death of a woman and adds his having robbed her after her death, but during that confession introduces into it circumstances with a view to excuse himself from a conviction . . . it is not . . . is wholly . . . authority. When the confession is shown to be voluntary and made with due apprehension of what was said and of consequences, the confession must be accepted and upon along with other circumstances as a whole, along the other evidence in the case. (*Barna*

## EVIDENCE ACT (1872), S 26.

—S 27—Applicability—Leading Statement leading to discovery not ultimately—Admissibility

S 27 of the Evidence Act refers to a

The g the  
inquest of the dead bodies of the victims that he would show the knife with which he took the Sub Inspector as the one where the knife was found there stated that he had a knife at the spot, that thrown it away into a might get into trouble vered from the bush me was a witness for the tended that the statement in evidence under S 27 as no discovery was made in consequence of information received from the

## EVIDENCE ACT (1872), S 27

s open to an accused person arises that he was an officer, although in the to have been formally Chand Dalip Singh

—S 27—  
Per Young

—S 27—Information leading to discovery of facts—Admissibility

of statement

The appellant along with two other

S 27 and Cr P Code, S 162—Confessions leading to discovery—Admissibility—S 27, Evidence Act—If affected by Cr P Code

words of S 162, Cr P Code, are wide to exclude a confessional statement made by an officer in the course of investigation but the provisions of S 27 of the Evidence Act are quite independent of S 162, Cr P Code and the amendment of the latter in 1923 intended to abrogate or impair the effect of the Evidence Act, hence a statement made by S 162 may become admissible under S 27 of the Evidence Act (Niyogi and

Genar, JJ) MOTILAL v EMPEROR

13 R M 408=1910 M W N 542=41 Cr L J 917=51 L W. 684=A I R. 1940 Mad 744=(1940) 1 M L J 758

—S 27—"Custody"—Meaning

(Per Rhids and Din Mohammad, JJ)—"Police custody" does not necessarily mean custody after formal arrest and it also includes some form of police surveillance and restriction on the movements of the person

185 I C 310=12 R N 150=41 Cr L J 585=A I R. 1940 Nag 66

—S 27—Scope—Statement admissible under—If excluded by S 162, Cr P Code See 1939 Dig. Col 525 MORRANNA, In re 188 I O 311=

13 R M 16=41 Cr L J 573

## EVIDENCE ACT (1872) S 27

—S 27—Scope—Statement by accused to police admissible under—If shut out by S Cr P Code S 1(2)—Special law 527 SUBBIAH TEVAR *In re*

—Ss 27 and 25—Statements confessions—If excluded for purpose

As S 25 of the Evidence Act states confessions made in a first information cluded from its operation. But however the statements made in the course of such an inadmissible confession

*previous statement—Admissibility in evidence*

It is not the duty of the police to decide what evidence is admissible and what is not, and a statement made by

evidence but statements made obviously for the second time before panchayatdars must be condemned. Such a second statement is inadmissible in evidence. It is the

*Admissibility*

No portion of any statement made by the any police officer during investigation

1940 A.W.R. (H.C.) 229—  
A.I.R. 1940 All 263 (F.B.)

—S 27—Statement under—If to be voluntary—

person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which they are both being jointly tried (*Wadia J*) EMPEROR v BHAGWAN-DAS BISESAR 42 Bom.L.R. 938

—S 30 and Cr P Code (V of 1898) S 342—*Confession* in S 30 meaning of—If can refer to confessions during examination under S 342, Cr P Code—Such confessional statements, if can be used against the co-accused

The word 'confession' used in S 30 of the Evidence Act clearly means such a confession as is required to be proved at the trial as a part of the prosecution evidence. It cannot therefore signify any matter which comes on the record at the end of the prosecution evidence, namely answers to questions put under S 342 Cr P

## EVIDENCE ACT (1872) S 32

Code Hence the statement made by a co accused

—S 30—Confession of accused falling under S 27—Admissibility and use of against co-accused—*dependent evidence—Effect*

a co accused may be taken into another accused, confessional of the Evidence Act come with— But there must be admissible evidence to point to the co accused's guilt. In assessing the probative value of the evidence a co accused's confession may be taken into consideration. But where

—S 30—Confession of co-accused—Admissibility and value of as against other accused

The confessions of a co accused implicating his co any value than he man in the can only be the Evidence there may be out to decide

—S 30—Confession of co-accused—Evidentiary value See 1939 Dig. Col 528 AH PHUT v THE KING 1940 Bang L.R. 104=12 B.R. 185= 41 Cr L.J. 129=185 I.C. 205

—S 30—Confession of co-accused—Use of—*Limits* When the substantive evidence is not sufficient to

re It can in no case be used to establish the prosecution evidence, N 12 B.N. 333= 1940 Nag 230.

—S 30—Statement of co-accused—*Admissibility* The statement of an accused person which does not amount to a confession cannot be used against his co-accused (*Blacker, J*) AMAR NATH v EMPEROR 42 P.L.R. 378,

—S 32—Dying declaration—Proof of—Record by Magistrate—If necessary

A statement intended to be proved as a dying declaration under S 32 of the Evidence Act need not be recorded by a Magistrate. Law does not require such statements to be made necessarily under expectation of death (*Mahomed Ahmad Khan C.J. and Birds, J*) RAISUDDIN v. GOVERNMENT OF LHOPAL. 190 I.

—S 32 (1)—Circumstances of the transaction—Meaning of—Admissibility of statement

## EVIDENCE ACT (1872), S 32

See 1939 Dig Col 530 NARAYANASWAMI v EMPEROR 6 Ont LT 25 (PO)

—S 32 (1)—Statements about the transaction which resulted in death—Admissibility—Nature of the proceedings

Where the statements are as to the circumstances of the transaction which resulted in the death of the person making them, they are admissible under S 32 (1), Evidence Act, in a case in which the cause of the person's death comes into question, that the person who made them was when he made them under expectation of the proceedings in which the question also does not matter. It need not necessarily be a proceeding on a charge of murder or homicide. It may be even a civil action. (Gruer and Puranik JJ) PARAMANAND v EMPEROR 190 IC 819—1940 NT 459 A 1940 NT 210

—S 32 (1) mere suspicion a not connected with—Duty of Public evidence is not to

Under S. 32 statements made by or the circumstances of the transaction that resulted in his death which can be admitted. The circumstances must be circumstances of the transaction expressions indicating fear or suspicion, particular individual or otherwise and related to the occasion of death cannot be. Statement by the deceased which provide than grounds for supposing that the deceased accused of having betrayed a relation civil suit which are in no way associated with the actual murder cannot be admitted under S 32 and must be excluded. Even if the accused does not object to such evidence it must be excluded. At any rate it is the duty of Public Prosecutor to see that such wholly in admissible evidence is not placed before the Court. (Burn and Mack) EMPEROR

—S 32 (1)—Necessity for—No

It is a well accepted principle that evidence should be corroborated by independent testimony. (Ayyangar, JJ) RAMA

In the true sense The Court must of course, be fully convinced of the truth of the statement. (Leach, C J, Lakshmana Rao and Krishnaswami Ayyangar, JJ) GURUS

## EVIDENCE ACT (1872), S 32

—S 32 (2) and (3)—Applicability—Memorandum of property made by deceased person for own information—Statement not made in course of business and containing nothing against pecuniary interest—Admissibility

An isolated piece of paper or memorandum made by a person who is dead, for his own information, about his property, which is not made by him in the ordinary

Weston, J) SABHAGIBAI v PIRKASH CHAND I L R (1940) Kar. 334=191 IC 111= A I R 1940 Sind 173

—S 32 (2)—Chowhuddibandi papers of zemindar

—S 32 (2)—Jama Wastil baki papers—Need for

—S 32 (3)—Statement against interest in cancelled will—Admissibility See 1939 Dig, Col 530 CHOUDA v B K RAI 185 IC 210=12 RN 141

—S 32 (3)—Statement if against interest—How determined See 1939 Dig, Col 531 MARKHU MAHTO 1940 Pat 16

boundary in not ordinarily as against a This rule is or instance Act, when proprietary the executant of the executant of to boundary is be admitted as a rate his evidence (Wadsworth, J) NA THEVAN =61 L W 509= 1910 Mad 450 as to relationship acknowledged made in See 1939 Dig, ATHAMAYYA 180 IC 325=13 E M, 250

—Ss 32 (5) and (6) and 90—Pandah's bikhri—When admissible

Pandah's bikhri are admissible under S 32 (5) and if evidence is led to prove the identity of handwriting of the writer. The bikhri is of no justification for under S 32 (5) and (6) or under

## EVIDENCE ACT (1872), S 32

S 90 (*Din Mohammad f*) MT NANHI v BADLU  
100 I C 507 = A I R 1910 Rang 191

—S 32(7)—Scope—Will—Statement as to age of testator written by scribe at the instance of persons present at the time—Statement not made by testator—Relevancy to prove age of testator See WILL—VALIDITY 52 L W 440

—S 33—Applicability—Evidence of witness in prior proceeding—Admissibility in later proceeding—Conditions—Specific issues on point—Necessity See 1939 Dg, Col 532 CHENDIKAMBA v VISWA NATHANAYYA 189 I C 325 = 13 R M 250

—S 34—Books of account—Admissibility—If can establish liability

The a  
ment of  
S 34  
make t  
Yorke,  
BAHAD

1940 O W N 555 = 13 R O 31 =  
1940 O L R 406 = A I R 1940 Oudh 485

—S 34—Zemindari papers—Statements  
Relevancy and admissibility See EVIDENCE  
SS 21 AND 34 19 Pat

—S 35—Birth and Death Register—Copy of  
an—Admissibility

School registers—Admissibility—S 32 (5) if affects the question

The entries as to the age of pupils in the II registers though they might have been mere from the Secondary School registers are under S 35 of the Evidence Act, as entries of public servant in a public or official register charge of his official duty Whether he had means of knowledge so as to make the entry relevant under S 32 (5) of the Act does not affect the admissibility of value  
(Pollock

—S  
Admissibility and value

Per Mukherjee, J.—A school register containing an entry as to the age of a student is undoubtedly admissible in evidence to prove his age but much value cannot be attached to it if it is no clear on whose statement the age was recorded (*Nasim A's and Mukherjee, J's*) JANAKI NATH LOY v JYOTISH CHANDRA ACHARYA 72 C L J 203

## EVIDENCE ACT (1872), S 41

—S 35—Entries in register of non-Government  
entries—Admissibility

loyee in a school other than a Government or school is not a public servant and any entry in made by him is not one made in a public or register by 'a public servant' in the discharge of official duty Hence entries in registers of other than Government or State schools are not in evidence under S 35 A I R 1935

Oudh 41 (*Miya Bu and Mosley J's*) HOAK BAING v MA E H I A 1940 Rang L R 481 =  
191 I C 21 = A I R 1940 Rang 191

ment proceedings—Admission of parties contained in—Admissibility See 1939 Dg, Col 533 KHEDU MAHTO: KHONKA MAHTO 20 Pat L T 929 =  
6 B R 142 = 185 I C 254 = 12 R P 330

communications sent by Collector to subordinate officers—If

under rules framed under the Court of Wards Act—

d under a  
Court of  
S 35 of

called as a witness (*Monroe, J*) MST REWTI v MOHAN LAL 42 P L R 283 = A I R 1910 Lah 312

—S 36—Rennel's maps—Admissibility

The maps of Rennel published in 1914 were with in 1914 were stop They are, therefore, ter and Roxburgh SAPAT CHANDRA 41 O W N 935

finding of—Finding of Insolvency Court that certain person is not partner of insolvent firm—If judgment in rem

A declaration of a legal right is a different thing from a declaration of a legal character The word "character" means status, it is something more than a mere right The declaration of a person's right operates against a particular person or group of persons against whom the right is claimed whereas a man's r

## EVIDENCE ACT (1872), S 41

a partner of a firm is not to declare character it is merely to declare to the particular firm. There

in relation to but in relation distinguishes him

## EVIDENCE ACT (1872), S 50

has been passed may impeach that decree for fraud and have it set aside if the fraud be proved. Under S 44, it is not necessary for the party against whom a

up against him by the other side, of the probate and the title of the

executor  
v D D I

—S 41—Judgment *in rem*—Admiralty Court—

Decision restoring certificate of force of See 1939 Dig. Col.

ABDULLAH v S S 'ELLORA'

ILR (1940) Kar 53=1

—S 41—Judgment *in rem*

Court declaring party to be widow—If binding in suit property in British Indian Court domicile Court See 1939 Dig. Col 53

PILLAI v SUBBAROVA CHETTIAR

506=

289

## —S 42—Facts in judgment—

relevant evidence of Judgments are not under S 42

relevant evidence

(Harper, S M)

BUDHSEN 193

## —S 42—

ing in—Value of

The probative

between the p

finding and of

subsequent suit

PARHLAD CHA

19 I

6 B R 236=

## —S 42—Proof of custom—Previous judgment—

Admissibility

A previous judg

Evidence Act f

(Almond, J C)

KHAN

## —S 48—Ad

See 1939 Dig. Col 535

DAS

## —S 48—Judgment not in

ity—Extent

Though the recitals and findir

inter partes are not admissible in evidence such a judg

valuable but it must be supported by statements of facts the accuracy of otherwise of which can be verified

(Burn and Stodart, J J) PULLAYIA v.

1940 M W N 761=52 L W 198

—Medical evidence as to age—Value—If

gal proof of age See 1939 Dig. Col

185 I O 271=12 R A 310=41 Cr L J 142.

—S 49—Unregistered deed of gift—Admissi

ity to prove collateral purpose See 1939 Dig. Col

535 NANDLAL v LAKHMI 187 I O 865=

12 R L 500

—S 50—Reputation—Evidence as to—What is

admissible—Section, if affected by S 110 Cr P Code

See BUDDHIST LAW (BURMESE)—MARRIAGE

AIR 1940 Rang 181

## —S 50—Judgment in

probate suit—If can be challenged—Pecature—Sepa

Act would apply in any proceed

If the decree sought to be chal

the adverse party It cannot be said

is not for revocation. A judg

doubt a judgment in rem

on the ground of fraud or

in which a decree in rem





## EVIDENCE ACT (1872), § 41

something which defines his position not in relation to any particular person or group of persons to the rest of the world, his status distinguishes him from the rest of the world. To say that a partner of a firm is not to declare his character it is merely to declare to the particular firm. There is no Insolvency Court that a certain part of the insolvent firm does not confer upon or take away from him any legal character within the meaning of § 41 of the Evidence Act.

*in*  
*BAI*

—S 41—Judgment *in rem*—Admiralty Court—Decision restoring certificate of officer of ship—Binding force of. See 1939 Dig. Col. 534. *YOOSTER v. S. S. 'ELLORA'*

*ILR* (1940) Kar 53=189 IC 9=1  
—S 41—Judgment *in rem*—Judgment Court declaring party to be adopted son widow—If binding in suit relating to property in British Indian Cession. See 1939 IC. *PILLAI v. SUBBAROVA CHE*

—S 42—Facts in relevant evidence of judgments are not relevant evidence. (*Harper, S M*) *BUDHSEN* 194

—S 42—Finding in—Value of The probative between the finding and of subsequent suit. *PARHLAD CHA* 19 F. 6 BR 236=

—S 42—F Admissibility

## EVIDENCE ACT (1872), § 50

has been passed may impeach that decree for fraud if it were set up against him by the other side, instead of admitting the probate and the title of the executor.

*v D D I*  
*I*

—S 44—Scope—Transaction contained in decree—Suit by individual creditor to set aside on his own

If in a case of a denial of the execution of a document the direct evidence of him

## rate suit—Necessity

S 44 of the Evidence Act would apply in any proceeding civil or criminal, if the decree sought to be challenged is proved by the adverse party. It cannot be said that it applies only in a suit for revocation. A judgment in a probate suit is no doubt a judgment *in rem* and can be contested on the ground of fraud or a stranger to a suit in which a decree *in rem*

—S 49—Unregistered deed of gift—Admissibility to prove collateral purpose. See 1939 Dig., Col. 535. *NANDLAL v. LAKHMI* 187 IC 865=12 B.L. 500

—S 50—Reputation—Evidence as to—What is admissible—Section, if affected by § 110 Cr P Code. See BUDDHIST LAW (BURMESE)—MARRIAGE. *AIR* 1910 Rang 181.

## EVIDENCE ACT (1872) S 65

—S 65(a)—Income-tax return—Secondary evidence—Admissibility. See 1939 Dig Col 536  
VARADARAJAM CHETTY v KANAKIAH  
186 IC 7—12 RM 682

—S 65 (e)—Public document—Income tax returns—If public documents—Certified copies returns—Admissibility to prove contents thereof Income tax Act S 54—Scope and object of. See 19 Dig Col 536 MYTHILI AMMAL v JANAKI AMMAL  
ILR (1940) Mad 329—189 IC 722—  
13 RM 314—1939 MWN 1237—  
AIR 1940 Mad 161

—Ss 65(e) and 74—Income tax return—Statement of assets showing details of income and profit and loss statement—If public documents—Certified copies—Admissibility in evidence—Income tax Act S 54—Scope

A profit and loss statement and a statement showing the details of net income filed by an assessee in support of his return of income furnished under S 22 of the Income tax Act are public documents with reference to S 74 of the Evidence Act of which it would be

document. It would be putting an unwarranted restriction on the words documents forming the act or records of the acts in S 74 (1) of the Evidence Act to say that they should be confined to those parts of an income tax record which the Income tax Officer has himself prepared and to exclude documents which he has himself called for or which have been admitted to the record for the purposes of the assessment (*Liak C J King and Smayya JJ*) KAMIA RAD v VENKAT RAMAYYA  
52 LW 189—1940 MWN 787—  
1910 ITB 480—AIR 1940 Mad 768—  
(1910) 2 MLJ 257 (FB)

—S 68—Attesting witness—Duty to call—Hostility of witness if an excuse

The fact that one of the attesting witnesses has turned hostile is no sufficient ground to excuse the party producing the document from his duty of calling the said witness. It is always

Attesting witness—Sub-registrar  
A sub-registrar who has signed a document in the presence of the executant after receiving from him acknowledgment—  
(*P. N. Lak J*)

—Ss 65 and 74—Proof of execution—Accidently

The definition of bond in S 215 of the Evidence Act which applies to the case of a bond and not S 65 and examination of the attesting witnesses to prove execution is not necessary (*Gower, J*) KANCHANDRA  
188 IC 633—13 EN 5—  
r ZIRAL  
1910 N LJ 76—AIR 1910 Nag 510

—S 68 Proviso—Certified copy of registered deed of gift produced in evidence—Party challenging it not denying specifically that it is copy of deed—Production of attesting witnesses if essential. See 1939 Dig. Col 536  
1. D 1940—38

## EVIDENCE ACT (1872) S 76

537 NANDLAL v LAKHMI 187 IC 865—  
12 RL 500

—S 68—Execution not denied—  
(*1st*)

M. N. V. A. FIRM v  
190 IC 413—13 RR 79—  
AIR 1910 Rang 184

—S 68 Proviso—Execution—Alleging, in the case of mortgage

The word execution as used in Evidence Act includes not only the whole series of acts necessary to give the effect like attestation and execution of the mortgage deed  
v SURAJ BALI  
1910 A Y

—S 68 Proviso—Meaning of—Mortgage bond. See 1939 Dig Col 533 HARE KRISHNA PANIGRAHI v JAGNESWAR PANDA  
187 IC 644—12 EC 600.

—S 68 Proviso—Specifically denied—That may amount to

Where the defendant not only denies the execution of the said mortgage deed but also states in his written statement that it is not genuine, the execution of the mortgage is specifically denied and the proviso to S 68 Evidence Act becomes applicable and it is incumbent upon the plaintiff to produce at least one of the attesting witnesses (*Zia ul Haque J*) KALI CHARAN v SURAJ BALI  
1910 O A 1029—  
1910 A WE (CO) 418—1910 O WN 1077

—S 71—Applicability—One of the attesting witnesses summoned but not produced in Court—Duty of plaintiff. See 1939 Dig Col 539 HARE KRISHNA PANIGRAHI v JAGNESWAR PANDA  
187 IC 644—  
12 EC 600

—S 71—Proof of attestation by other evidence—Permissibility—Other evidence—If includes plaintiff's evidence. See 1939 Dig Col 537 JAI KARAN DAS v MOTAPRSINGH  
ILR (1939) 2 Cal 479—  
187 IC 718—12 EC 601—AIR 1940 Cal 189

—S 73—Denial of signature—Safe way to prove signature

Where a signature is denied, the only safe way to prove that the alleged signature is really the signature of the person who denies it, is to produce some signature admittedly made by the same person at about the same time as the disputed signature was allegedly signed (*Dutt*) RAM PAL v TIBAR KHAH  
1910 A MLJ 2.

—Ss 74 and 76—Public document—Entry in Register of powers of attorney—Copy of such entry—Admissibility—Registration Act S 10. See 1939 Dig. Col 539 PATTU KUMARI FIE v KIRMAL KUMAR  
185 IC 631—12 EC 592

—S 74 (1)—Public document—Income tax return and statement filed by assessee showing details of income. See EVIDENCE ACT Ss 45 (2) and 74  
(1910) 2 MLJ 257 (T.B.)

—Ss 76 and 77—Income tax assessment order—Assessee's right to a copy—Admissibility of such copy—Income tax Act S 54. See 1939 Dig. Col 540 PHOMOTHANATH PRANANICK v VIRODE CHANDR GHOSE.  
185 IC 5—12 EC.  
AIR 1910

—Ss 76 and 77—Certified copy of—Admissibility

## EVIDENCE ACT (1872) S 81

Where a document purports to be a copy given by a public officer having the custody of a public document but does not bear a certificate as required by S 76 of the Evidence Act and is not supported by the evidence of the person who prepared it is inadmissible in evidence (*Forst v*) KHADIM ALI v JAGANNATH  
1940 O A 973—1940 A W R (CC) 428—  
1940 O W N 999

## S 81—Reports and Gazetteers—Value of

Reports and Gazetteers are not strictly evidence of the truth of all the statements contained in them although they may be read for what they are worth (*Naimi Ali and Ran v*) KALI PROSONNA v NAGENDRA NATH  
44 O W N 873

## S 83—Plan relied on before Commissioner but accuracy not proved—Admissibility

A plan the accuracy of which has not been established by evidence in accordance with S 83 of the Evidence Act can be admitted in evidence when both parties had relied on it before the local Commissioner and no objection was taken that it had not been proved to be accurate (*Abdul Rashid v*) MAHOMED SULEMAN v BUDRUDDIN  
190 I O 689—42 P L R 247—  
A I R 1940 Lah 309

## S 83—Thakbast map and thakbast khasra—Entries as to irrigation rights—Presumption of correctness—Evidentiary value of

The thakbast in Bihar in 1844 was only a rough and ready survey made in 1844 as a preliminary to the regular Revenue survey made in 1845. Its function was to record boundaries only as a demarcation survey and water rights were completely beyond its scope. The surveyors had no authority to record any irrigation rights and such notes made on thakbast maps carry no presumption and are not evidence. Such a map can not be treated as raising a presumption of correctness under S 83 of the Evidence Act and the entries in the thakbast khasra have by themselves no evidentiary value (*Agarwala and Meredith v*) HARINAR PRASAD SINGH v JANAK DULARI KUMAR  
21 Pat L T 873

## S 90—Applicability—Copies—See 1939 D G, Col 540

## S 90—Applicability—Copy of document 30 years old—Presumption of due execution of original—If arises

S 90 of the Evidence Act does not apply to a copy. It is only where the original document which is 30 years old is produced before the Court that a presumption may be made under S 90 as regards its genuineness. There is nothing in the section to justify the view that if a certified copy of an ancient document is produced before the Court the genuineness of the original may be presumed. The production of a copy is not sufficient to justify the presumption of due execution of the original under S 90 (*Singaravelu Mudaliar and Venkata Ranga Iyengar v*) NANJAPPA SETTY v HASSAIN BEE  
17 Mys L J 610—45 Mys H C R 57

## S 90—Applicability—Copy not 30 years old

The presumption contained in S 90 of the Evidence Act cannot apply to a copy that is not itself 30 years old (*Pollock, v*) GANPATRAO v NAGORAO  
1940 N L J 437—A I R 1940 Nag 382

## S 90—Applicability to copy of document—See 1939 D G, Col 540

## S 90—Due execution—Proof of—Production of copy of sale deed—Suffices other evidence in support of sale deed—L Test—See 1939 D G, Col 540

## S 90—Due execution—Proof of—Production of copy of sale deed—Suffices other evidence in support of sale deed—L Test—See 1939 D G, Col 540

## S 90—Due execution—Proof of—Production of copy of sale deed—Suffices other evidence in support of sale deed—L Test—See 1939 D G, Col 540

## S 90—Due execution—Proof of—Production of copy of sale deed—Suffices other evidence in support of sale deed—L Test—See 1939 D G, Col 540

## EVIDENCE ACT (1872), S 92

S 90—Pandah's bahis—When admissible—See EVIDENCE ACT SS 32 (5) AND (6) AND 90

## S 90—Scope—Presumption of truth of contents of document—If justified

S 90 of the Evidence Act does not involve any presumption that the contents of a document more than 30 years old coming from proper custody are true. The presumption is only as regards due execution (*Singaravelu Mudaliar and Venkata Ranga Iyengar v*) NANJAPPA SETTY v HASSAIN BEE  
17 Mys L J 610—  
45 Mys H C R 57

## Ss 91 and 63 (5)—Compromise reduced to writing—Oral evidence—Admissibility—Secondary evidence

Where the terms of an agreement to compromise are reduced to writing under S 91 of the Evidence Act, no evidence can be given in proof of its terms except the document itself or secondary evidence of its contents. Oral accounts of the contents of a document could under S 63 (5) of the Act be given by some one who has seen it himself (*Pollo v*) TRIMBAK NARAYAN v YADORAO  
186 I C 851—12 B N 280—  
1940 N L J 85—A I R 1940 Nag 116,

## S 91—Lease—Written but unregistered—What all can be proved with reference to

S 91 of the Evidence Act prohibits any oral evidence being given of the terms of any disposition of property which has been reduced to writing. All the agreed arrangements in a document will be incapable of proof by oral evidence. But that does not mean that external matters existing apart from the document are not provable. If therefore a rate of rent has been agreed upon between the parties and recorded in an unregistered lease no oral evidence may be given of that agreed rate. But if rent has been paid there is nothing in the section to prevent proof of that payment being adduced independently of the document. In the same way if as a matter of fact the parties are related to each other as landlord and tenant that fact also can be proved by oral evidence. S 91 is not intended to prevent persons giving evidence of facts which are in actual existence quite apart from any documentary evidence on the subject (*Qureshi v*) KAMAL MOHAMMAD v MST ZUBEDA  
1939 A M L J 148

## S 91—Scope—Written contract—Oral evidence to prove—Admissibility—See 1939 D G, Col 541

JANARDAN PARIJA v PRANDHAN DAS  
190 I C 377—7 B E 20—13 P P 193—  
A I R 1940 Pat 245

## S 92—Applicability—If limited to parties and representatives

S 92 of the Evidence Act applies only as between the parties to a transaction and those claiming under them respectively (*Pardachariar and Abdul Rahman v*) SURAYYA v MANGAYYA  
1940 M W N 19

## S 92—Construction of document—Evidence of content or intention of parties—Admissibility

Extrinsic evidence as regards the conduct of parties is excluded under S 92 of the Evidence Act in coming to a conclusion in regard to the intention of the parties executing a document unless there is ambiguity in the language used in the document. The Courts are practically limited to the document itself to construe what the intention of the parties was. Where the deed itself is silent or its language is ambiguous the operation of its terms and conditions and any other relevant circumstances from which the probable intention of the parties may be reasonably inferred, may be taken into consideration (*Abdul Ghani, O C v* and *Venkatarama*

1937 Pat 49

EVIDENCE ACT (1872), S. 101.

S 92—Scope—Deed stating that consideration was paid in cash—Evidence to show that consideration was paid in goods—Admissibility

note silent as to interest—Letter agreeing to pay interest at specified rate—Payment of interest at such rate—Evidence as to—Admissibility. See MYSORE NEGOTIABLE INSTRUMENTS ACT, S. 80

18 Mys L.J. 449

S 92, Proviso (2)—Conveyance—Agreement not specified—Admissibility. See *1 v AWADH* at L.T. 138. and scope—was agreed—adjusted in to consist of

A.I.R. 1940 Pat 379

S 92—Scope—Registered lease—Oral as to modify—Admissibility. See 1939 Dig. C JADUNANDAN DAS v MT MAHO

185 I.C. 281—6 B.R. 148—12 R

S 92, Proviso 1—Applicability—Evidence contradicting written document

plaintiff and defendants—Oral evidence to prove—Admissibility

the parties relation not per-  
AZIZ v MAUNG PE TINT  
13 B.R. 36—

S 92, Proviso 1—K/—  
wrongly entered in sale deed—Oral  
evidence

ment varying terms of deed as to payment—Admissibility

Though it is always open to a mortgagor to prove that on a certain day he paid the sum due under the mortgage, still when in the registered mortgage deed made in should  
agor will

Under S. 92, Proviso 1 of the evidence is admissible to prove that, of the land sold were wrongly entered in the sale deed particularly when both the vendor and the vendee admit that a mutual mistake of fact had crept into the sale deed. (*Abdul Rashid, J*) ARYA v. BAUNDL

A.I.R. 1940 Pat 49.

S 92—Applicability—Sale deed—Mutual mistake of parties—Oral evidence—Admissibility.

Where in the case of a sale deed it is not the seller

An obligor is not tied up from pleadings which shows that the bond was given in consideration, whether consistent or not with the bond. The validity of a deed challenged on the ground of the illegality of the action. (*Agarwal and Koteland, JJ*) BRAHMDEO

S 101—Burden of proof—Objection as to wrong

the burden of proof and he cannot be allowed to turn been wrongly treated in the (*Kanjilal and Sukhdeva*) 131 JAWFI

1933 Mar L.R. 244 (Civ.)

Onus immaterial—Rich not entering

properly included in deed was not intended to be made

ously to secure registration in the particular sub district, is not inadmissible under S 92 of the Evidence Act. It is not evidence which varies the terms of the written document as between the parties and their representatives. It is evidence which goes to show that the document did not relate to land within the jurisdiction of the particular sub registrar who registered it. It may well be evidence which tends to render the document invalid and hence admissible under the 1st Proviso to S. 92 (*Harris, C.J. and Munier L.J.*) KAN-

on of ones of proof is of no great

by part II,

In a case where the parties are

the question of law of

## EVIDENCE ACT (1872), S 101

(*Dalip Singh, J*) MD YUSUF ALI & DC HOSHIAR  
PUR 190 IC 466-13 EL 171=  
AIR 1940 Lah 336

—S 101—Onus immaterial—Facts proved by ample evidence

In a case where all the facts are proved by ample evidence and the Court is in a position exactly to say what happened no importance need be attached to the rule as regards burden of proof. It is only in cases where evidence is meagre and the Court is not in a position definitely to know what happened that the technical rule as to burden of proof is to be observed (*Ranjitmal and Sukhdeonarain JJ*) BALKISHAN & MST JAWRI 1939 M L R 244 (CIV)

—S 101—Person not in possession of property—Proof of title—Onus

If a person is not in possession of a property, the onus of showing a good title to it is on him (*Monroe J*) BABU & DALIP SINGH 42 P L R 294=  
AIR 1940 Lah 311

—S 105—Scope—Prosecution not proving case—Accused not proving exception pleaded—Right to acquittal *See* 1939 Dig Col 546 SHEWARAM & EMPEROR I L R (1940

41

—Ss 105 and 106—Scope and effect exception—Charge under S 243, I P Code

of murder—Burden of proof

An accused cannot prove his own defence on a charge

—S 106—Failure to go into witness box—Presumption—Party being a *pardanashin* if a good excuse for the failure

A party's failure to go into the witness box raises a presumption in his case

—S 106—Negligence alleged against public body—Burden of proof

## EVIDENCE ACT (1872), S 115

Possession of property is presumptive proof of ownership, and under S 110 of the Evidence Act, the burden of proving that the person in possession is not the owner is on the person affirming that he is not the owner (*Singarathel Mudaliar and Venkata Ranga Iyengar, JJ*) NANJAPAA SETTY & HASSAIN BEE 45 Mys H C R 57=17 Mys L J 510

—S 111—Mortgage transaction between solicitor and client—How Courts would view *See* LEGAL PRACTITIONER—RELATION WITH CLIENT 1940 O A 910 (P O)

—S 112—Applicability—Maternity in dispute

S 112 can have no application to a case where the maternity of a person is in dispute and not his paternity (*Jazakar*) NAND KISHWAR BUX & GOPAL BUX 188 I O 1=12 R P C 187=

6 B R 636=21 Pat L T 519=52 L W 57=

1940 O L R 331=1940 P W N 572=

1940 O A 558=1940 A W B (P O) 101=

1940 M W N 922=72 O L J 263=

AIR 1940 P C 83 (P O)

—S 114—Applicability to criminal cases

III (b)—Approver's statement—Need for

consent of an approver cannot be accepted in the absence of corroboration in material particulars

—Continuance of relationship after suit—Presumption—*See* LANDLORD AND TENANT 71 O L J 100

—S 114, III (f)—Certificate of posting—Presumption

Where a certificate of posting is put in evidence, the presumption is that the person named in it was posted to that place

HEMANGINI DASSEE & SARNA  
190 IC 533=13 R O 177=  
AIR 1940 Cal 227

—S 115—Acquiescence and waiver—Agreement to lease land—No actual demise—Lessee entering possession

## EVIDENCE ACT (1872) S 115

of Rs 1000 No lease was however executed at all but the defendant's husband remained in possession and paid no rent In 1925 the record-of-rights was published and in that the defendant's husband was described wrongly as a tenure-holder The plaintiff subsequently gave notice to the defendant calling upon her to give up possession of the property but she refused The

defendant pleaded acquiescence and waiver on account had been erected on the  
Held (1) that the possession with the co-plaintiff was an agreement to lease and

acquiescence and waiver The plaintiff was therefore entitled to possession, the defendant being given an opportunity to remove the structures if they existed (5) that the defendant could not, however, be ejected from

DECI 190 LC 581-13 RP 212-21 Pat LT 277-  
A 7 D 1010 44 422

Where an occupancy tenant mortgages his holding to the zamindar, and he sells his mortgagee interest to a third party and later obtains the surrender of the holding from the tenant he is not estopped from suing to eject the purchaser of the mortgagee interest The zamindar does not dispute the validity of the mortgage

## EVIDENCE ACT (1872), S 115

deeds sold by him, but only pleads that the rights conferred by that deed have come to an end owing to the subsequent surrender by the tenant (*Harper, S M and Sathe, J M*) MAKHAN TEWARI v JANG BAHADUR RAI 1910 ED 488=1910 OA 1017  
—S 115—Acquiescence—Silence, when amounts to

—S 115—Compromise decree—Estoppel—Test

The test for determining whether there is an estoppel in any particular case in consequence of a decree passed

Court passed on the compromise or was it necessarily

finding that valuation beyond Court's jurisdiction—  
Suit sent to first class Judge and tried  
there—Appeal to High Court—Competency  
Where a suit is filed in a  
class Subordinate Court of a

## EVIDENCE ACT (1872), S 115

and accounts in respect of a house which is alleged to be public or private religious property, is, on objection by the defendant directed to be sent to the Court of a first class Subordinate Judge on the ground that the value of the suit house being over Rs 10 000, the former Court has no jurisdiction to hear the suit and the plaintiff accepts that position and goes to trial he cannot in an appeal by the defendant to the

## EVIDENCE ACT (1872), S. 115

*Held*, that the plaintiffs by their acts and conduct were estopped from denying the permanent nature of the tenancy (*Tek Chand and Dalip Singh, JJ*) MT. NAZIR UL-NISA v MAHOMED ISHAQ

ILR (1940) Lah 352=188 IC 372=

12 RL 522=42 PLE 61=

A IR 1940 Lah 100

—S 115—Consent decree—If creates *See* COM

D. LAHORE v PUNJAB NATIONAL BANK,

se orders must be carried out and the judgment

Subordinate Judge He is consequently estopped urging the objection that an appeal lies only to District Court and not to the High Court

*Broomfield J*—Such an objection taken to the dating and reprobation JJ GAJRAMJI

Bom LR 413=

A IR 1940 Bom 242

—S 115—Conduct—Charge holder putting up property to sale in execution—Charge mentioned in application for sale proclamation—*Estoppel*

If a person holding a charge waived his right in respect of the property up to sale without disclosing it, there is no doubt that he would be estopped by his own conduct from pleading a charge at any subsequent time. But where the charge holder in the application for execution has clearly mentioned that the property was charged and the charge is not mentioned in the sale proclamation owing more to an omission on the part of some officer of the Court than to any deliberate omission on the part of the charge holder, he would not be estopped by his own conduct from setting up the charge subsequently. In any event even if it be assumed that the omission to mention the charge

to carry out its orders in the same way and to the same extent as the judgment debtor himself. It is not necessary for the decree holder to see the transferee all over again. But when the decree is merely declaratory and does not direct the doing of a particular thing that is when it is not executable then an important difference arises and the transferee, though bound by the decision in the sense that it is *res judicata*, is not necessarily bound to the same extent and in the same way as the

—S 115—*Estoppel*—None if truth known

S 115 does not apply to a case where the statement relied upon is made to a person who knows the

—S 115—Express provision of law—*Estoppel* against

A promise not to eject against the express provisions of law cannot operate as an estoppel (*Sathe, J*) KHFUDU SINGH v MAHESH 1940 R T 222=

to various persons by successions and transfers in some of which the vendors described themselves as tenants and no objection was raised by their predecessors in interest to any of the

## EVIDENCE ACT (1872), S. 115

ment. The lessee took no objection to the third person's occupation of the land and to his construction of a house thereon until the building was complete and in the occupation of the third person's tenant.

*Held*, that having induced the third that he was in lawful possession of the right to construct a building thereon by lessee was estopped from questioning third person's possession or his right

## EVIDENCE ACT (1872), S. 146

In a suit for ejectment by one of the co sharers only, it is not open to the defendant to deny the plaintiff's right to settle the land or to sue for the defendant's

1940 Mad 240  
—Duty of head

is claimed the  
he document in

amounts to a representation is that a legal duty was owed by the representative to the the disclosure the omission of creating an estoppel (*Dunkley* MAYMYO MUNICIPALITY, 1901

document the court is entitled, according to the law

—S 123—Privilege—Diary of foot constable  
hadowing movements of suspect.

—S. 116—Applic  
end. See 1938 Dig, 4  
NANDLAL

—S 116—Estopp  
plaintiff.

Where the rent suit is brought by the daughters claim ing to be heirs to the leasehold rights alleged to be the stridhan of their mother, though the tenants cannot dispute the title of their mother at the commencement of the lease they can dispute the derivative title of the plaintiffs. It is in such a case incumbent upon the plaintiffs to prove that the leasehold rights in question were the stridhan of their mother and they are entitled to inherit the said rights according to Hindu Law (*Bhidi, J*) PARKASH KAUER v. GIAN CHAND

A I.R. 1940 Lah 341.

—S 116—Plea of loss of title, subsequent to ten ancy—If open to a tenant. See 1939 Dig. Col. 551 LUCKMAN CHAPLAIN v. PEAREY LAL.

186 I.C. 274—12 E.A. 331.

—S 116—Scope—Rule of estoppel—If modified by Presidency Small Cause Courts A SIDENCY SMALL CAUSE COURT

—S 116—Suit for ejecta  
sharers only—Land admittedly  
by plaintiff—Plaintiff's right to sue, if can be denied.

41 Cr.L.J. 667—A I.R. 1940 Lah. 217.

—Ss. 123, 124 and 162—Privilege—State not a party—Rules governing production of documents. See 1938 Dig, Col. 683 BHAIYA SAHEB v. RAHINATH I.L.R. (1940) Nag 280

—S 132, Proviso—Compulsion—What amounts to. See 1939 Dig, Col. 554. RASOOL BHAI v. THE KING 41 Cr.L.J. 48.

—Ss 133 and 114, III (b)—Accomplice as wit-  
ness See 1939 Dig, Col. 554. NGA THIN PE v.  
THE KING. 41 Cr.L.J. 44.

—S 145—Applicability—Illiterate person See 1939 Dig, Col. 554. MUZAFFAR KHAN v. EMPEROR. I.L.R. (1939) Lah. 609.

—S. 145—Proof of previous statement—Necessity for. See 1939 Dig, Col. 555 MUZAFFAR KHAN v.

Limits of.



**EVIDENCE ACT (1872) S 154**

Magistrate should confine questions as to character asked in cross examination to questions which are relevant to the case and disallow questions which are

*Entire evidence is shown to be rejected*

When a witness becomes hostile it would in certain

—S 154—Hostile witness—Evidence of—Value of—Declared hostile—Use of—Durability—Permission to treat witness as hostile—Grant of—Duty of Court

It is now settled that the evidence of a witness who is

the which by association have come to carry by implication a misleading significance (*Rowland and Chatterjee JJ*)  
NEBTI MANDAL v EMPEROR 19 Pat 369=  
180 IC 457—13 RP 220=7 BR 59=  
41 Cr LJ 910=1940 PWN 73=  
AIR 1940 Pat 289

—S 1  
boundary—of  
statement

—S 1

—S 162—Privilege—State doc  
1938 Dg Col 684 BHAIYA SAHE  
ILR

—S 163—Police-diary in  
ed inspecting witness's statement  
him—If bound to give entire  
evidence

S 163 of the Evidence Act is applicable to criminal trials as well as to civil actions. If during cross-examination of a witness the counsel for the accused calls for the statement that witness recorded by the police in Calcutta during investigation and inspects it for the purpose of contradicting the witness the Government counsel is entitled to require the counsel for the accused to give the whole of the state-

**EXECUTION**

ment as evidence excluding only such portions as are not relevant to the case although that would bring on the record those parts of the statement which are corroborative of the witness's evidence at the trial in addition to those set out on the record by counsel for the accused being contradictory of that evidence. But there is no formal notice or requisition from the accused calling for the police diary and the Government counsel produces it stating

187 IC 138=12 RC 553=41 Cr LJ 408=  
AIR 1940 Cal 167

—S 167—Improper admission of evidence—Duty of Court—Conviction on the remaining evidence See  
1939 Dg Col 684 JAMNA PRASAD v EMPEROR  
ILR (1940) Nag 188

EXECUTION—Application for—Decree passed by  
maul Khan—On passing of  
on Court of District Judge  
Subordinate Judge—Application  
transfer certificate granted  
ple)—If competent

A decree was passed by the Court of the District Judge Dera Ismail Khan. After the passing of the decree the Frontier Courts Regulation came into force and the Court of the District Judge became the Court of the Senior Sub Judge. Later on the decree holder applied to the District Judge (new style) for transfer of the decree to the Court of the Senior Sub Judge. The District Judge thereon issued a decree transferring the decree to the Court of the Senior Sub Judge.

Attachment—Necessity—Decree—Hypothecation of immovables offered by judgment debtor as security for satisfaction of decree—Sale without attachment—Validity

Where immovable properties are the subject matter of a security bond executed by the judgment-debtor hypothecating those very properties

18 Pat 719=20 Pat L 1 924

—Bar of—Compromise—Effect of  
A judgment debtor is always entitled to resist execution of a decree on the ground that the compromise is not binding on him. The compromise is binding on the debtor and the creditor. See *Bank Ltd v Akhouri Bindhyachal Prasad* 185 IC 608=6 BR 222=12 RP 387=21 Pat L T 173= AIR 1910 Pat 261

## EXECUTION

—*Compromise—Effect of—Facilities given to judgment-debtor for paying decretal of extinguished*

Where under a compromise between holder and the judgment debtor the certain facilities to enable him to pay

—*Death of decree holder—Right of legal representative to continue execution*

When a decree holder dies pending execution proceedings, his legal representative can get his name substituted and continue the execution. No fresh application is necessary. (*Abdul Qayyum C J and Wazir Ram*)  
CHUNNI LAL v WAZIR ASU RAM

42 P L R J & .  
—*Executing Court—Jurisdiction—Determination of—Value of suit or amount of decree*

It is the value of the suit and not the amount of the decree which determines the jurisdiction of the executing Court. (*Abdul Qayyum C J and Kichlu J*)  
DARZI v KASOOL SHEIKH 42 P L R J

—*Executing Court—Power to execute extraneous included in decree—Power to execute*

If once extraneous matters are allowed to be included in a decree without any objection on the part of the defendant, the executing Court cannot refuse that part of the decree on the ground that it is extraneous to the subject matter of the suit. The defendant has a right to appeal against the decree thus drawn up and have that matter excluded. But if he does not

## EXECUTION.

is a decree in arbitration proceedings under the Arbitration Act, 1916, the executing Court with consent of the parties on the face of the decree may file it had and Lodo, J)

10 Sind 150

—*Court to determine—Judgment and concise statement—Referency—If can be looked at*

When an executing Court proceeds to execute a decree it proceeds on the footing of the decree which is transmitted to it for execution. The executing Court has no

executing Court to execute the decree, it has to be decided by that decree. When doing so documents which are part of the proceedings in execution of the decree e.g. the concise statement and judgment of the

—*Executing Court—Powers of—Objection that decree was passed without jurisdiction—Investigation*

—*Executing Court—Powers of—If a decree has become incapable of execution owing to coming into force of new law—If can be given effect to*  
See MAHARAJA'S ESTATE'S LAND ACT (AS AMENDED BY ACT XV (II) OF 1936) S 6 (1) EXPL (2)

(1940) 2 M L J 881  
—*Executing Court—Power of—Reference to arbitration—Power to grant permission to file award made on arbitration* See C P CODE O 21 R 2

42 Bom L R 867  
—*Executing Court—Power to go behind decree*  
See 1939 Dig, Col 556 RAJINDER KUMAR v CHETANLAL 188 I C 639-13 R L 35-5

A I R 1940 L R 65  
—*Executing Court—Power to go behind decree—If a decree without content—Decree good on face of it—Objection in execution that decree is null as being passed in suit barred by s 69 Partnership of executing Court to go into* See PARTNER SS 69 AND 74 (1940) 1

—*Executing Court—Power to go behind award filed in Court—Power to question award*  
An executing Court can enquire into and a decree is a nullity not on the ground of jurisdiction because the decree passed is not a decree at all such as in the case of a decree against a person who is dead, or

Court to entertain the objection (*Henderson J*)  
MIRZAPUR LOAN CO, LTD v PROMODA KANTA BASU 44 CWN 392

—*Executing Court—Powers of—Validity of decree—Power to question*

It is clear law that the executing Court can only question the decree of a Court on the ground of lack of inherent jurisdiction and cannot question it on the ground of illegal exercise of jurisdiction or a material irregularity in the exercise of jurisdiction. (*Dalip Singh J*)  
ANJUMAN IMPALE QANZA BAHVI v ABDUL GHANI 189 I C 370-13 R L 75-5

42 P L R 126-A I R 1940 Lab 280

—*Executor—Execution against—Attachment of personal property—Permissibility*

Where an executor is only a debtor in his

—*Jurisdiction—Objection to—When to be Court having no power to try suit—Jurisdiction*

## EXECUTION

*execute decree in such suit—Failure to take objection at early stage—Effect—Waiver*

The standard by which the jurisdiction of the executing Court to execute a decree is to be considered is its capacity to try the suit itself. If cannot be urged that unless the decree on the face of it showed want of jurisdiction the same must be deemed to exist. Nor can it be said that the question cannot be raised at a later stage when it goes to the very foundation of the jurisdiction of the executing Court. The jurisdiction of each of the Subordinate Courts is based on what the Legislature has invested it with. It is not a matter of consent of parties. Therefore if the Court attempts to deal with a matter which is beyond its jurisdiction no consent of parties can give it jurisdiction. A second class subordinate Judge who has no jurisdiction to try a suit filed in the High Court can have no jurisdiction to execute the decree in that suit although the decree is only a decree for costs for an amount which is within his jurisdiction. The fact that the objection was not taken at an early stage does not make the proceedings valid and cannot give rise to waiver. A question of waiver cannot arise unless it is pleaded and when the question goes to the root of the jurisdiction there is no question of waiver or acquiescence (*Kania J*) *RUSTOJEE SORABJI v MAHADEV CHINTAMAN* I L R (1940) Bom 633 = 190 IC 394 = 13 R B 110 = 42 Bom L R 596 = A I R 1940 Bom 277

*Limitation—Implied adjudication as Inference—Circumstances*

An implied adjudication on the question of limitation can be inferred in cases where the execution Court passed any effective order for further execution to the detriment of the judgment debtor. But it depends on the circumstances of each case. Where notice of an execution application was sent to judgment debtor, who did not appear and the case was consigned to records at the request of the decree holder and the costs of the execution were given to the decree holder and the balance due under the decree was also noted. It was held that an implied adjudication on the question of limitation could not be inferred and that the awarding of costs and noting of the balance due under the decree were mere formal matters and of a ministerial character and did not involve any adjudication on the question of limitation (*Raddhabrishna J*) *RAMELAL v MANDAI* 185 IC 650 = 12 R O 252 = 1940 O W N 15 = 1940 O L B 25 = 1940 A W R (CO) 42 = A I R 1940 Oudh 226

*Mortgage decree against two properties—Decree holder agreeing to execute against one item in the first instance—Effect—Sale of that item becoming impossible—Right to proceed against other item*

Where there is a mortgage decree as against two items of property and the decree holder agrees to execute the decree as against one of the items only in the first instance and to proceed against the other, in case of deficiency the effect is that both properties always remain liable for the debt. The mere fact that the decree holder agreed to proceed against one of the items first could not prevent him from proceeding against the second property, if for any reason the property was prohibited or became impossible (*ISMAIL ALI v OMHAR MAL*) 11

*Mortgage decree—Right of Execution against some of mortgaged properties* See C P Code O 34 R 5 (3) I L R (1939) 2 Cal 455

*Order consigning application to record—Effect of Application if pending*

## EXECUTION

An order merely consigning an execution application to the record is not an order of dismissal. It is in no sense a final disposal of the case (*Abdul Qayyum C J* and *Wajir, J*) *DUNI CHAND v THAKAR DASS* 42 P L R J and K 335

*Order striking off application—Effect of—If finally disposes of application*

If an executing Court wants to dispose finally of an application, it should use clear and unambiguous language such as 'the application is dismissed'. 'Striking off an application' is a phrase which is capable of a number of meanings (*Harris, C J* and *Manohar Lal, J*) *PRATAP UDAI NATH v SUKHDEO PRASAD* 18 Pat 649 = 186 IC 291 = 12 R P 481 = 6 R R 324 = A I R 1940 Pat 54

*Revival—Application under Encumbered Estates Act—Subsequent to execution application—Stay—Dismissal of application under Encumbered Estates Act—Fresh application for execution—If barred by limitation*

Where on a judgment debtors application under Encumbered Estates Act action on the decree holder's application for execution was delayed, and after the rejection of the application under the Encumbered Estates Act a fresh application for execution was put in by the decree holder on a plea that it was barred by limitation it was held that the application after the rejection of the application under the Encumbered Estates Act was not barred by limitation (*Baron, C J* and *Manohar Lal, J*) *BARASWATI PRASAD* 100 D 186 (2) = 1940 A W R (B R) 73 (2),

*Revival—Striking off execution application—Subsequent application—If fresh application or revival of former*

An application in execution which is re-assisted by the action of the Court in striking off a previous application for execution is not in law a fresh application, but must be taken to be an application to revive or continue the former application (*Leach C J* and *Krishna Swami Aiyangar J*) *SIVASUBRAMANIAN CHETTIAR v MURUGESA MUDALIAR* 1940 M W N 345 = 51 L W 739 = A I R 1940 Mad 566 = (1940) 1 M L J 537

*Revival—Test* See C P CODE, SS 47 AND 48 1940 A L J 301 (F B)

*Right to—Compromise decree against X and Y—X to be proceeded against in first instance—Execution against X unsuccessful—Decree holder's right to proceed against Y* See 1937 Dig, Col 559 *MAULA BUX v ABDUL LATIF* I L R (1939) Kar (P O) 369

*Sale—Finding nature—Suit to recover possession of part of property sold—Mortgageability* See, 1939 Dig, Col 559 *BAHU v AMIR SINGH* 187 IC 294 = 12 R A 511 = A I R 1940 All 78

*Sale in—Purchaser's rights—Sale of right title and interest of judgment debtor in mortgaged property—Such property a lien*

*Purchaser's right—Purchaser under money and mortgage decree* 1940 Rang 1 (F B). While a purchaser at an execution sale under a mere money decree gets no more than the right, title and interest of the judgment debtor at the date of the sale, the purchaser under a mortgage decree gets the right, title and interest in the mortgaged subjects which the

## EXECUTION

mortgagor had at the date of the mortgage and charged thereby Buying the mortgagee and mortgagee and option H 30

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ILL. (1940) Kar (P.C.)

1940 A W E (P.C.)

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1940 O.L.R. 26-70 C.L.J. 546

42 Bom L.R. 331-21 Pat L.T. 237-

1940 P.W.N. 328-A.I.R. 1940 P.C. 11-

(1940) 1 M.L.J. 87 (P.C.)

—Sale in pursuance of order in partition suit—Sale subject to confirmation of Court—Person making highest bid in excess of reserve price—Right to have sale confirmed—Offer of higher price by another after sale—If ground for refusing to confirm See 1939 Dig. Col. 560 SUNDARARAJAN v. KHAKA MAHOMED ISMAIL SAHEB 186 I.O. 118-12 R.M. 591-A.I.R. 1940 Mad. 42.

—Sale—Rent decree—Sale passes—Purchaser—If only interest of judge

The question whether decree passes only the property sold or the whole upon the form of the execution

—Sale—Setting aside—Sale proceedings not supervised by Court

If the executing Court does not take any action to satisfy itself that a proper sale of the immovable property is conducted and leaves the entire matter in the hands of its officer Nazir, the sale is liable to be set aside. (Abdul Qasim, C. J. and Waur, J.) J.A.R. v. KUTHI SANTA MAL 42 P.L.R. J. & K. 1

—Sale in—Purchaser—Rights of

In execution of a mortgage decree against a Mat median mother and her minor son who was represented by his brother as guardian ad litem in the suit property was sold and purchased by a third person Subsequently

—Mortgage suit did

—Held, that the rights of the bona fide auction purchaser were not affected and the sale—*Ande Din Ahmed* DIN.

—Sale in

subject to confirmation of Court—Person bid in excess of reserve price—Right to have sale confirmed—Offer of highest price by another after sale—If ground for refusing to confirm See 1939 Dig. Col. 560 SUNDARARAJAN v. KHAKA MAHOMED ISMAIL SAHEB

## EXTRADITION ACT (1903; 8-7)

Where a judgment-debtor dies after the issue of a sale notice to him and the sale is subsequently without his legal representative

upon the person seeking to set aside the sale to show that it was in fact illegal (Edgley, J.) TAVIZALI v. NARAYAN

As DAUL

The decree

—Court to the effect of the decree amount had been received by him and that the file might be assigned to the record room, the decree-holder is not entitled to receive anything more in connection with the decree from the judgment-debtor. (Abdul Qasim, C. J.) HAVAT MAHOMED v. FAQIR CHAND 42 P.L.R. J. and K. 338.

—Striking off—Consigning to record room—Effect of. An order 'striking off' an

—A.I.R. 1940 Mad. 221. EXTRADITION ACT (XV OF 1903), 8-7—Contents of warrant. See 1910

—S. 7—Warrant directing

—ILL. (1937) Kar (P.C.) 321. 68 I.A. 222-A.I.R. (1937) Kar (P.C.) 324

## EXECUTION

*execute decree in such suit—Failure to take objection at early stage—Effect—Waiver*

The standard by which the jurisdiction of the executing Court to execute a decree is to be considered is its capacity to try the suit itself. If cannot be urged that unless the decree on the face of it showed want of jurisdiction the same must be deemed

stage does not make the proceedings valid and cannot give rise to waiver. A question of waiver cannot arise to the aver or

190 I C 394=13 E B 111

*Limitation—Implied a Inference—Circumstances*

An implied adjudication on the can be inferred in cases where the passed any effective order for the detriment of the judgment debtor. But it depends on the circumstances of each case. Where notice of an execution application was sent to judgment debtor who did not appear and the case was consigned to records at the time of his death and the costs of the

*Mortgage decree against two properties—Decree holder agreeing to execute against one item in the first instance—Effect—Sale of that item becoming impossible—Right to proceed against other item*

Where there is a mortgage decree as against two items of property and the decree holder agrees to execute

*Execution against some of mortgaged properties* See C P Code O 34 R 5 (3)

I L R (1939) 2 Cal 455  
*Order consigning application to record—Effect of Application if pending*

## EXECUTION

An order merely consigning an execution application to the record is not an order of dismissal. It is in no sense a final disposal of the case. (*Abdul Qayoom C J and Wiser, JJ*) DUNI CHAND v THAKAR DASS

42 P L E J and K 335

*Order striking off application—Effect of—If*

finally of an unambiguous dismissed which is capable

Harriet C J and Manohar

1 NATH v SUKHDEO

3 Pat 649=186 I C 291=

324=AIR 1940 Pat 54

under Encumbered Estates

tion application—Stay—

under Encumbered Estates

r execution—If barred by

Where on a judgment debtors application under Encumbered Estates Act action on the decree holder's application for execution was delayed and after the rejection of the application under the Encumbered

*Subsequent application—If fresh application or revival of former*

An application in execution which is necessitated by the action of the Court in striking off a previous appli

Revival

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*Right to—Compromise decree against X and Y—X to be proceeded against in first instance—Execution against X unsuccessful—Decree holder's right to proceed against Y* See 1937 D G, Col 559 MAULA BUX v ABDUL LATIF I L R (1939) Kar (P O) 369

*Sale—Binding nature—Suit to recover possession of part of property sold—Maintainability* See 1939 D G, Col 559 BARU v AMIR SINGH

187 I C 294=12 R A 511=AIR 1910 All 78

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Write a purchaser at an execution sale under a mere money decree gets no more than the right title and interest of the judgment debtor at the date of the sale, the purchaser under a mortgage decree gets the right, title and interest in the mortgaged subjects which the

## EXECUTION

mortgagor had at the date of the mortgage and charged thereby. Buying the mortgaged property free from incumbrances he gets the title both of the of those interested in the equity of redemption not a mere successor in interest of the equity of redemption at the date of

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—Sale in pursuance of order in partition suit—Sale subject to confirmation of Court—Person making high est bid in excess of reserve price—Right to have sale confirmed—Offer of higher price by another after sale— if ground for refusing to confirm See 1939 Dig. Col 560 SUNDARARAJAN v. AHAKA MAHOMED ISMAIL SAHEB 186 I O 118=12 R M 591=

—Sale—Rent decrees— passes—Purchaser—If gets only interest of judgment de

19 Pat 618=188 I C 729=13 R P 20=  
1940 P W N 420=6 B R 713=

—Sale in—Purchaser—Rights of  
In execution of a mortgage decree against a Maho

raise any such plea

ment debtor not brought on record.

## EXTRADITION ACT (1903; B 7)

Where a judgment debtor dies after the issue of a sale notice to him and the sale is subsequently held

—Sale in—Validity—Sale without attachment  
A sale without attachment is not void (Bhadr, J)  
DAULAT RAM v. PRITAM SINGH  
I L R (1940) Lah 516=188 I C 335=  
12 R L 519=A I R 1940 Lah 78

—Sale—What passes  
The purchaser at an execution sale under a money

—Striking off—Consigning to record room—Effect  
of  
An order 'striking off' an execution application and

OF 1884), B 4 and R. 35  
—Fireworks—Explosive—Electric sparklets—Possession  
without licence—Offence

tents of warrant See 1939 Dig. Col 560 MATTHEW

I L R (1939) Rar (P)

## EXTRADITION ACT (1903), S. 22.

FACTORIES ACT (XXV OF 1934), S. 42 and 81—Prosecution for allowing work beyond time fixed—Plea in defence—*Bona*

—Protection under S. 81, if available—*S*  
Col. 691 PROVINCIAL GOVERNMENT, C P & REMAR

*v.* SETH CHAPSI, I L R (1940) Nag 257

—S. 71—Scope and effect—Charge against occupier or manager—Complaint by latter against another—Right of Factory Inspector to cross-examine accused on latter's complaint.

Where a complaint is lodged by an accused under S. 71 of the Factories Act, the Factory Inspector, as complainant in the original complaint, can cross-examine the accused when he goes into the witness box to prove his own complaint. The effect of S. 71 is that when an

accused goes into the witness box to prove his own complaint, the Factory Inspector should have the right to cross-examine a person who has charged if that person

—S. 71(1)—Procedure under—Discharge of owner or occupier and conviction of actual offender on latter pleading guilty—Legality. See 1939 Dig. Col. 562 SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL, I. N. BIRLA

I L R (1940) 1 Cal 120=185 IC 319=70 C L J 463=41 C C J 131=12 R O 333

FAMILY ARRANGEMENT—Validity—Essentials—*Bona fides*

13 R B I=42 B O M L R 253=A I R 1940 B O M 181

allowed on the merits or even on the ground that new matter has been discovered, which if it had been produced at the hearing of the appeal might materially have effected the judgment of the Court. An applicant

## FEDERAL COURT RULES, O. 37, R. 1.

not be allowed to raise new points and counsel was not fully instructed and therefore the points at the original hearing or in

It is a matter for counsel's discretion how a case is presented to the tribunal and which points

and  
AL. V.  
.. 197=

3 Fed L J 67

## FEDERAL COURT RULES, O. 8, R. 1 and O. 15 R. 4—Applicability—Application in revision—Applica-

—O. 8, R. 2—Date of signing of the decree—Meaning of *See* 1939 D. G. Col. 563 LACHMESHWAR PRASAD SIKUL v. GIRDHARI LAL, 19 Pat. 123=

185 IC 353=6 B R 159=12 R P 353=3 Fed L J (P II) 1 (F B)

and with  
by High

act to suggest that the Parliament did not intend the Federal Court to have the amplest power over its own process here, it ought to be the exclusive prerogative of the

Court to decide whether a litigant has done any forfeit his right to prosecute his appeal for the justice of the case requires it, the Federal Court is entitled to excuse applicants from compliance with so much of O. 10 of the Federal Court Rules as require them to have the record prepared and printed in the High Court and to lodge their petition of appeal in the Federal Court within 60 days of the

bar to the prosecution of the appeal before Federal Court. The provisions of O. 45 are procedural provisions only and non-compliance with them in the High Court of the (1) of the

vering the  
dismiss the  
be invoked  
the High

refusing to extend the time to  
145 R. 7 stands (Gujar,  
Lachmishwar, J. J.) LACHMESH-

GIRDHARI LAL (HAU-  
R (F O) 1=187 IC 670=

C. 33=1910 O L R 300=

N 280=3 Fed L J 15=

309=1910 M W N 461=

10 C L J 327=6 B R 513=

A I R 1940 F O 28

of Federal Court to excuse  
Rules—Scope of—Exercise of such

—The two parts of R. 1 of O. 37, 11, the same rule are really separate and distinct. The first deals with the exemption of the parties from compliance with any of the requirements which have been expressly laid down in the Federal Court Rules. The second reserves general power to

## FISHERY

give directions in matters of practice and procedure as considered just and expedient. It follows that in all cases where the Rules are silent this provision can appropriately be resorted to. But of course, that would not entitle the Federal Court to excuse compliance with the rules of the code, made applicable by the Adaptation of Order.

Per *Gwyer, C J*—Although framed to be kept and not to be framed for the purpose of assisting the purpose of enabling it to be strict adherence to the rules is diligent of advantages which the clearly intended to give him the may properly exercise the dispens by O 37 in order that substantial, But the Federal Court can only exercise its own rules and cannot excuse compliance of a High Court and still less with the statute. [In this case the Federal Court applicants from compliance with so Rr 12 and 3 of the Federal Court Rules as required of them (1) to have the record prepared and printed in the High Court and (2) to lodge the petition of appeal in

1940 M W N 461-42 P L R 312-6 B R 543-  
71 C L J 327-A I R 1940 F C 26

**FISHERY**—Grant of right—Navigable and non navigable rivers—Crown's right in England and India

In England the right of the Crown to grant a several

also grant a several fishery to a private individual in non navigable rivers or in *deals* and land locked waters as an incorporeal right apart from the right to the sub-

waters as a part of the river system

Per *Rau J*—The effect of the decided cases has in

(*Assam A. and Rau JJ*) RAJNANDINI DEBI  
MONMOTHA PAL. I L R (1940) 2 Cal 393-  
44 C W N 1079

## FRAUD

**FOREIGN JUDGMENT** See also C P CODE, S 13

—Incidents—Judgment obtained in foreign Court against some of joint promisors—Suit against the rest in British Indian Court—If barred

It is a well established principle of Private Interna

**FOREST ACT (XVI OF 1927) S 52**—Removal of timber seized under—Conviction to theft—Finding as

See 1939 D G, Col 564

41 Cr L J 10

g with trees not belonging to

See 1939 D G, Col 564

41 Cr L J 10

(IX OF 1859), S 20—

If still in force and un

affected by Act VIII of 1868—Limitation for purposes of S 20—Starting point

S 20 of the Act to provide for the adjudication of claims to property seized as forfeited requires that persons who have any claim that they are the owners of property which has

and as the property of another,

such a claim within one year from

or seizure of the property which

though Act VIII of 1868 has re-

sections of the Act of 1859 S

latter Act is not affected by Act

and the application of S 20 is

permanent, because it was intended to be a permanent bar against subsequent suits in Civil Courts and hence has remained in force up to the present day. Limitation for the purposes of

Where a person has assigned his decree to another person with a view to avoid attachment of that decree

Court  
be  
his  
( )

—Finding of — Inference from circum-  
stances of direct proof—If then justified—  
circumstances required



**FRAUD**

It is well settled that where fraud is to be inferred from circumstances and is not directly proved those

Legal and moral fraud—Distinction S  
Dig Col 564 UMRAO BEGUM v RAHMAT  
186 IC 77=12 RI

Party to fraud—Right to relief on b  
fraudulent scheme to delay creditors—Duty of Court to  
refuse relief

A plaintiff  
to delay a  
success can  
to recover p  
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and a fraud  
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(Anny C J and Singaravatu Mudaliar J) NAGA  
BHUSHANA BHATTAR v SEETHAMMA  
18 Mys LJ 409

Policy of law—Two equally innocent or equally  
guilty persons

the  
the  
enacted a law which was in force at the time of  
(Din Mohammad J) GHULAM FATIMA v GOPAL  
DEVI 190 IC 599=AIR 1940 Lah 289

Proof—Basis of finding—Inference of fraud  
from mere fact of unfairness of bargain—If justified

**GOVT OF BURMA ACT (1935), S 124**

It is open to parties to a litigation to agree to prayers  
of the opposite side being granted even though they  
may not be tenable strictly according to law but it will  
be very unsafe to say that such action constitutes fraud  
(Harper, S M and Sathe J M) THAKRA v TIKA  
RAM 1940 E D 222=1940 A W R (B E) 87

**GENERAL CLAUSES ACT (X OF 1897) S 3 (25)**

Applicability—Bazar duty

190 IC 143=13 R O 118=  
1940 A W R (C C) 357=1940 O L R 535=  
1940 O A 746=1940 O W N 782=  
A I R 1940 Oudh 409

**NDU LAW—GIFTS****HOMEDAN LAW—GIFTS**

to payment of donor's debts—Poss

payment of the debts  
the gift cannot retain  
repudiate the burden  
J J RAM SARUP  
453=13 R L 162=  
A I R 1940 Lah 285

**GOLD COAST CRIMINAL CODE S 330—Sedi**

tion—Incitement to violence—If necessary ingredient—  
Extrinsic evidence of intention—Necessity for

It is in the Criminal Code of the Gold Coast Colony

derived from any expositions however authoritative of  
the law of England and Scotland. Nowhere in that  
section is there anything to support the view that incite  
ment to violence is a necessary ingredient of the crime of  
sedition. Violence may well be and no doubt often is

Act of—Compromise—Agreeing to prayers not  
tenable according to law—Fraud, if can be inferred

and plainly refer to natural persons only and not to arti  
ficial persons. When the acts of the official trustee com

GOVT OF INDIA ACT (1915), S. 32

GOVT. OF INDIA ACT (1935), S. 109

terms of the Government of India Act mere declaration by the Civil Court of dismissal is illegal and that the servant be reinstated to his post will not serve any real purpose. Because he was illegally dismissed, it does not necessarily follow that a good officer or that he might not have been legally dismissed and justifiably dismissed on proper grounds and after a proper enquiry.

(Henderson, J.) PROVINCE OF BENGAL, v. BHUPENDRA KUMAR ROY 44 CWN 79= 71 C.L.J. 305

—S 106 (2)—A

*ment of duty by caste*

A bill of entry relating to certain goods not declare certain goods as dutiable or exempt from duty by the

item of the value declared and also imposed a penalty. The letter to the importer stated that 'the duty short-levied must be paid.' The final order of the Collector of customs referred to the penalty and also to the 'payment of correct duty assessed under S 87 of the Sea Customs Act.' The final order of the Collector of Customs under S 87 of the Sea Customs Act.

*Taxing Act—Procedure*

Before passing a taxing Act the Local Government

power of the Provincial Government to legislate as to possession is thus a qualified, and not an absolute power. It is subject to the rights of the Central Government. (Beaumont C J Wadia, Wasthedeo and Sen

Legislature and the Provincial Legislature where the laws passed by the two Legislatures are among the sub

—S 107—Jhar Act (IX of 1938) S 15—If

19 C P Code, and void as such. See 569, KAZAUR RAHMAT v. UDIT 185 IC 185-12 P.P. 303

epagnancy of Provincial Law to exist in Indian Law—Principles of construction. See SHYAMKANT LAL v. RAMBHA-

71 C.L.J. 309.

*Assent of Governor—Objection as to sanction under S 277 (3)—Main*

required the assent of the Governor, it is thereafter questioned on the ground that previous sanction to its introduction, as required by sub S (3) of S 277 of the Government of India Act

## FRAUD

It is well settled that where fraud is to be inferred from circumstances and is not directly proved circumstances must be such as to exclude any other possible possibility. In other words the criterion is that to which is applicable to circumstantial evidence in criminal cases (*Faulstich and Meredith JJ*) **RAJA SINGH v CHAICHOO SINGH**

185 IC 816=12 BP 423=6 BR 262=  
20 Pat LT 957=AIR 1940 Pat 201

Legal and moral fraud—Distinction See 1939 Dig Col 564 **UMRAO BECUM v RAHMAT ILAHI**

186 IC 77=12 BL 351

Party to fraud—Right to relief on basis of fraudulent scheme to delay creditors—Duty of Court to refuse relief

A plaintiff who has taken part in a fraudulent scheme to delay a creditor and carried it out with considerable success cannot afterwards ask the Court to help him to recover properties conveyed by him to the defendant in pursuance of that scheme. There is no distinction in this respect between a fraud to defeat a creditor

shown to have embarked on such schemes to refuse any assistance to him in carrying them to completion (*Rully C J and Singaravelu Mudaliar J*) **NAGA BHUSHANA BHATTAR v SEETHANNA**

18 Mys LJ 409

Policy of law—Two equally innocent or equally guilty persons

DEV. 190 IC 598=AIR 1940 Lah 269

Proof—Basis of finding—Inference from mere fact of unfairness of bargain

A Court is of course entitled to go in or fairness or otherwise of a bargain

fraud if how  
fraud is wholly  
case a finding of  
transaction was  
unfair From the mere fact that it was an infatigable

## GOVT OF BURMA ACT (1935) S 124

(*Harper, S M and Sathe J M*) **THAKRA v TILAK RAM**

1940 RD 222=1940 A WR (BR) 87

GENERAL CLAUSES ACT (X OF 1937) S 3 (25)

—Applicability—Bazar dues

Bazar dues constitute a benefit arising out of the land and therefore a lease of bazar dues is a lease of immovable property within the meaning of S 3 (25) of the General Clauses Act (*Thomas, C J and Bennett J*)

## GIFTS

See also (1) HINDU LAW—GIFTS

(2) MAHOMEDAN LAW—GIFTS

Gift subject to payment of donor's debts—Post

payment of the debts

the gift cannot retain

reputate the burden

(*Jek Chand and Abdul Hashim JJ*) **RAM SARUP v**

**SHIV DAYAL MEHRA** 190 IC 463=13 BL 162=

42 PLR 307=AIR 1940 Lah 285

GOLD COAST CRIMINAL CODE, S 330—Seditious

Incitement to violence—If necessary ingredient—

Extrinsic evidence of intention—Necessity for

It is in the Criminal Code of the Gold Coast Colony

the law of England and Scotland. Nowhere in that

intent on as defined in the section. If the words are  
seditious by reason of their expression of a seditious  
intention the seditious intention appears without any  
extrinsic evidence (*Lord Chancellor*) **WALLACE**

## GOVT OF INDIA ACT (1915), S. 32

plained of are done during the course of administration of the trust as an ordinary trustee under S 7 (1) (a) of the Official Trustees Act, his acts cannot be said to be done in the execution of his duty as a servant of the Crown and hence the consent of the Governor is not necessary in respect of a suit against such a trustee for breaches in respect of a private trust (*Roberts C J and Dunkley J*) (OFFICIAL TRUSTS—

1910 Bang L.R. 273=

## GOVERNMENT OF INDIA

Act of Indian Legislature exclu  
Civil Court—If ultra vires

An Act excluding the subject's right of resort to the Civil Courts is not ultra vires of the Indian Legislature S 32 of the Government of India Act does not affect the validity of an Act which creates an obligation and provides an exclusive code for its determination, such

dismissal—Cause of action—Mere declaration by Civil Court—If justified

A servant of the Crown who is dismissed from

terms of the Government of India Act A mere declaration by the Civil Court that the dismissal is illegal and that the servant is fit to be reinstated to his post will not serve any useful purpose. Because he was illegally dismissed, it does not necessarily follow that a good officer or that he might not have been legally dismissed and justifiably dismissed on proper grounds.

(Henderson, J.)

BHUPENDRA KUMAR

S 106 (2)—A

ment of duty by customs

A bill of entry relating to

not declare certain goods

certain other goods

them for duty by the addition of

item of the value declared and also imposed a penalty

The letter to the importer stated that the duty short-

levied must be paid. The final order of the Collector

of customs referred to the penalty and also to the "pay-

ment of duty by customs."

The Customs Act.

Held, that what was done by the Customs Authorities

was not outside "revenue" or collection of revenue and

that to interfere in the matter would be to exercise juris-

diction.

Taxing Act—Procedure

Before passing a taxing Act the Local Government

## GOVT OF INDIA ACT (1935), S 109

has to follow the course provided by S 82 of the Government of India Act (*Stone, C J and Clarke, J*)  
RADHAKISAN JAISKIAN v MUNICIPAL COMMITTEE, KHANDWA  
1910 N L J. 638  
—S 100 (1) and (3)—List 1, items 54 and 55 and List 3, item 42—Urban Immovable Property Tax imposed by Bombay Finance Act of 1932—Nature of tax

II, item 31—Power of Provincial Legislature to legislate as to possession of liquor—Prohibition of possession—Legality

Obiter—A right to legislate as to possession of intoxicating liquors must necessarily involve a right to prohibit possession. The Provincial Legislature has

no power to legislate in respect of possession of intoxicants in such a way as to encroach upon the right to import and export across the customs frontiers. The

JJI) EMPEROR v SAVER MANUEL DANTES

1911 C 85=42 Bom L.R. 791=

A I.R. 1910 Bom 307 (F.B.)

—S 104—United Provinces Regulation of

—S 107—Bhar Act (IX of 1938), S 15—If

is C.P. Code, and void as such, See

569 RAZAUR RAHMAN v. U.D.T.

185 I.C. 135=12 E.P. 303

Repugnancy of Provincial Law to

existing Indian Law—Principles of construction See

1939 D.C., Col. 570 SHYAMKANT LAL v. RAMBHAN-

JAW SINGH 71 C.L.J. 309

—S 109 (2)—Assent of Governor—Objection as to

validity

If an Act has received the assent of the Gov-

ernment, its validity cannot be thereafter questioned on the

ground that previous sanction to its introduction

under sub S (3) of S 279 of the Government

## GOVT. OF INDIA ACT (1935), S 143

was not obtained. (*Iqbal Ahmad, Baqas and Moham-  
mad Ismail, JJ*) *ALIQA BIGAM v ABDUL MAGHNI  
KHAN* I L R (1940) All 455=188 I C 586=  
13 B A 27=3 Fed L J (H C) 83=1940 R D 135=  
1940 A L J 274=1940 A W R (H C) 208=  
AIR 1940 All 272 (F B)

—S 143—"Were being lawfully levied"—Inter-  
pretation

The words "were being lawfully levied" as used in  
S 143(2) of the Government of India Act refer only  
to the taxes which were being actually levied and not to  
those that could be levied (*Din Mahomed J*) *DAU-  
LAT RAM v MUNICIPAL COMMITTEE, LAHORE*

42 P L R 780  
—S 170—Suit against Secretary of State—Des-  
cription of defendant as "Government, Punjab Province  
through Deputy Commissioner"—If affects institution  
of suit

In a suit instituted against the Secretary of State, the  
description of the defendant as "Government Punjab  
Province through Deputy Commissioner" does not in  
any manner affect the institution of the suit Under the  
present Government of India Act all that is necessary to  
be mentioned is the "Province" The addition of the

## GOVT. OF INDIA ACT (1935), S 205

41 Cr L J. 695=1940 O W N 494=1940 O A 459=  
A I R 1910 Oudh 382

—S 205—Certification—Duty of High Court—  
Nature of.

It is a well settled general rule that "an absolute  
enactment must be obeyed or fulfilled exactly, but it is  
sufficient if a directory enactment be obeyed or fulfilled  
substantially" It is sufficient if the plain object of the  
directory provision is carried out The duty imposed by  
S 205 on the High Court to consider in every case  
decided by it and to certify or withhold certification that  
the case involves a substantial question of law as to the  
interpretation of the Act or any Order in Council passed  
under it is only directory as distinguished from being  
absolute or mandatory and arises only in a case where  
there is reasonable ground for thinking that the ques-  
tion of law as to interpretation mentioned in S 205 may  
be involved (*Vescount Maugham*) *PUNJAB CO-  
OPERATIVE BANK, LTD v. COMMISSIONER OF  
INCOME TAX, LAHORE* 52 L W 926=

A I R. 1940 P C 230 (P C)

—S 205—Duty imposed on the High Court by  
S 205—Effect of the absence of certificate

S 205 of the Government of India Act imposes on the

—S 205—Certificate refused by High Court—Rea-  
sons for refusal—Power of Federal Court to enquire  
into

(1910) 1 M L J 64 (P C).  
—S 205—Grant of certificate—Case involving  
validity of certain Act—Act subsequently repealed and  
re-enacted—Certificate if becomes infructuous—Juris-

## GOVT. OF INDIA ACT (1935), S 205

divest the Court of its jurisdiction, (12) that the fact that the relief which the appellants claimed arose from an Act which was not law when the certificate was granted was quite immaterial inasmuch as under S 205 (2) once a certificate has been granted the appellant can appeal on any ground whatever with the leave of the Court.

*Obiter*—The appeal was declined to the High Court respect to which the certificate has been granted was

## GOVT. OF INDIA ACT (1935), S 205.

conditions from a decision of the Federal Court to His Majesty in Council, S 205 does not provide for a case where no certificate is given, however plain it may be that it ought to have been given. There is no provision express or implied taking away from His Majesty in Council the right to entertain a direct appeal in such case and *a fortiori* there is nothing taking away the right of His Majesty in Council in a case specified in S 205. There is no appeal to His Majesty in Council in the absence of a certificate. The

*Appellants' Act*—The appellants' Act

S 205—Vacating of certificate given—Power of High Court—C P Code, Sr 151 and 152

power either under S 152, use of inherent powers to which was correct at the time because of the happening of Guyer, C J, Sulaiman and HANAND CHOWDHARY v.

of the said Bihar Act of 1938. Shortly afterwards this Act was repealed and re-enacted with retrospective effect by the Bihar Money Lenders Act of 1939 and in the petition of appeal lodged in the Federal Court the appellant relied on S 7 of the Act of 1939 which replaced S 11 of the Act of 1938.

*Held*, (1) that the certificate did not become void or

1940 F.C. 45=187 I.C. 436=1940 P.W.N. 337=6 B.R. 449=1940 M.W.N. 682=1940 O.L.R. 249=52 L.W. 127=21 Pat.L.T. 621=12 R.F.C. 18=44 C.W.N. (F.R.) 18=72 C.L.J. 174=3 F.L.J. 58=AIR 1940 F.C. 7=(1940) 1 M.L.J. (Supp.) 23

S 205 (1)—Certificate under—Effect of—Civil Revision Petition—Order of dismissal by single Judge—question as to interpretation of Federal Court—Com. Rr 2 and 17—Petition

grounds mentioned in his application to the High Court for admitting the appeal, in any event the Federal

of the High Court dismissing a Civil Revision Petition is a final order, and when the order is reversed by the Federal Court and certified that

when a judgment, decree or final order is made by any High Court in British India which involves a substantial question of law as to the interpretation of any Act or any Order in Council made thereunder, if any, that is the direct appeal, shall lie to the Federal Court. The word "direct" is used to make provision for an appeal in such a case on certain

1940 M.W.N. 849=1940 A.L.J. 180=1940 (1910) 2 M.L.J. 170

## GOVT OF INDIA ACT (1935), S 205

—S 205 (1)—Construction—Substantial point of law as to the interpretation of the Act or of any order in council etc.—Meaning of—Order of foreign and political Department No 34, 1st dated 14-1-1937—Construction of—Decision on—Certificate—If can be granted See 1939 Dig Col 572 HARMOHAN PATNAIK v EMPEROR 3 Fed LJ (H O) 78=186 IC 442=6 BR 371=41 Cr LJ 313=12 RP 510=21 Pat LT 252=AIR 1940 Pat 109.

—S 207 (1)—Charge of cheating against Deputy Inspector of Schools—Inducing District Educational Council by false information to admit school to aid—Prosecution—Sanction of Governor—Necessity

*Held* that the acts constituting the offence were done by him in the execution of his duty as a servant of the

—S 208—Leave to appeal—Grant c See 1939 Dig Col 573 HORI RAM v PER R

—209 (1)—Remission of case to Powers of Federal Court See 1939 D SHYAMKANT LAL v RAMBAHAJAN SING

—S 221—Judgment—Meaning of

as understood by the C P Code, in India, but also all final orders (Pollock, J) GHANASHYAM PRASAD v VISHWANATH 1940 N L J 93

—S 224—Power of superintendence—Scope and extent of

The power of superintendence of Magisterial Courts conferred on the Chief Court of Sind by law includes necessarily the power to guide, advise and encourage Magistrates in the faithful discharge of their judicial duties (Davis C J, Lobo, Weston and Tyabji, JJ) EMPEROR v P C, TARAPORE

—S 224 (2)—Scope—Order of village Headman under S 10 of Regulation XI of 1916—Appeal—Revision—Competency S ANNA PILLAI, In re

—S 226—Applicability—Concerning the revenue, etc.—Application to High Court to direct Income tax Officer to forbear from assessing applicant—Competency.

## GOVT. OF INDIA ACT (1935), S 270

See INCOME-TAX ACT, SS 5 AND 64

1940 I T R 139=42 Bom LJ 414  
—S 226 (1)—Imposition of penalty under S 167 (17), Sea Customs Act—Suit to recover back penalty—Jurisdiction of High Court—Penalty upheld by special Tribunal and confirmed by Central Government—Civil suit—Maintainability

The adjudication of the penalty under S 167 (17) of the Sea Customs Act is an adjudication of a matter concerning the revenue and its collection is an act ordered in the collection of revenue according to the usage and practice of the country or the law for the time being in force within the meaning of S. 226 (1) of the Government of India Act. The High Court has therefore no ver back the special tribunal the penalty is confirmed of the act, a (Wadia J) AKTIESELS-

KAB v SECRETARY OF STATE

42 Bom LJ 532=AIR 1940 Bom 294  
—Order for confiscation of goods  
Act—Jurisdiction of High Court

made  
power of municipal authorities to raise—Jurisdiction of High Court to decide

—S 270—Applicability—Non gazetted officers See 1939 Dig Col 574 ARJAN SINGH v EMPEROR I L R (1940) Lah 102=41 Cr LJ 65=42 P L R 51

—S 270—Charges against servants of Crown—Necessity for Governor's consent See 1939 Dig, Col 574 ARJAN SINGH v EMPEROR I L R (1940) Lah 102=41 Cr LJ 65=42 P L R 51

—S 270—Consent granted by Governor—Presumption See 1939 Dig, Col 574 ARJAN SINGH v EMPEROR I L R (1940) Lah 102=41 Cr LJ 65=42 P L R 51

S 270 and 59 (2)—Consent of Governor Home Secretary—Validity See 1939 Dig, ARJAN SINGH v EMPEROR I L R (1940) Lah 102=41 Cr LJ 65=42 P L R 51

—S 270 (1)—Applicability—Acts of a public ser

ment of India Act came 37, the act referred to in of India Act, is an act done prior to April 1937 Hence S 270 (1) can have no application to the acts of a public servant after April 1937 (Thomas, C J and Zia ul Hasan, J) MAQUEBOOL

## GOVT. OF INDIA ACT (1935), S 270

MUSAIN v EMPEROR 188 I C 846 =  
 41 Cr L J 695 = 13 R O 31 = 1940 A Cr C 77 =  
 1940 A W R (C) 250 = 1940 O L R 385 =  
 1940 O W N 494 = 1940 O A 459 =  
 A I R 1940 Oudh 382

—S 270 (1)—Applicable for paying amount of money by of payee and returning form under St 409, 467 and 471, Governor General—Necessity

Code

Held, that the postman was unquestionably a person employed in connection with the affairs of the Government of India and that the forged document was used

Code, but that there was no bar to the trial of the offences under

Rao J) S

—S 27  
 —Test to decide—Allegations in charge or suit—Facts put forward by accused or defendant in case—Relevancy See 1939 Dig, Col 574 HORI RAM SINGH v EMPEROR I L R (1940) Lah 400 = 71 O L J 340

—S 270 (1)—Contract to public servant—Nature and Legislature See 1939 Dg SINGH v EMPEROR

—S 270 (1)—Scope—A

## GRANT.

—S 306—Scope—Order of Provincial Government under S 36, Madras District Municipalities Act and issued in name of Government under S 59, Government of India Act, revising prior order—Application for writ of certiorari—Maintainability—Government of India Act S 40—Scope and effect of 1939 Dg, Col 576

SECRETARY TO

= 186 I C 440 =

12 B M 631

## GOVERNMENT SECURITIES ACT (X OF 1920)

S 5—Scope and effect of—Beneficial ownership in securities—If affected

> 5 of the Government Securities collection of the Government who arise from the person who is the

The question as to the beneficial ownership of promissory notes and securities is not affected by S 5 (Venkataraman J) SAMPATHIRAYUDU

52 L W 247 =

A I R 1940 Mad 878 = (1940) 2 M L J 278

GRANT—Colony land—Horse breeding grant—Condition of permanent settlement in estate—Permission obtained to appoint sarbath—Effect of,

One condition of a horse breeding grant is that the

against order dismissing application under Ss 16 and 17

(Wassoodew and Indarnarayan, JJ) DAWOOD ABDUL

is Muzul Interior assigned to 'Sarkis Kings—Continuance by British Government as Serraniam or Devasthanam—Description in zam register as jat nam—Effect—If grant is made to the head personally—Grant of



## GRANT.

*nam by head—Validity as against succeeding head—Right of latter to levy assessment from sub-inamdars*

A vi-  
charya  
by the  
order  
main-  
and engage himself in praying for the continued existence of the everlasting kingdom" It was stated that the grantee was exempted from all civil dues and official taxes and that no one should under any circumstances come in his way for the purpose of recovering the revenue, etc. This grant was confirmed in 1760 by the then Maratha King by a fresh sanad, which recited that the grant of the village by way of sarva inam should be continued to enable him "to continue the annachatra, and other religious performances in the Sansthan continuously and perform the festivals of the anniversary days", etc. "With all trees, water, stones ar incidents" In 1863, the British continued the grant as sarva inam to the Math so long as the jahagurs the Math were continued subject to such nazarana as Government might think fit to levy the inam com was a devasth, but in the classed as jat Sankaracharya the Sankara-

had rendered services to the grantor loyally for a long time and had been very useful In 1735 one land in the same village was grant Sankaracharya in inam to a Brahman been performing his daily religious the Math and who was well-versed in tras and Ve then Sankara ment on the by the three sors in title respondents) and on their refusal to pay, he re-

by way of rent or assessment for the suit lands, for refund of the amounts already recovered and for a perpetual injunction restraining such levy in future

Held (1) that the grant was in inam to the Math and in the nature of a devasthan inam and the fact that for some reason or other the inam was entered in the alienation register as jat or personal inam did not make it any the less an inam to the Math, and being an inam to the Math, it was subject to all the conditions attaching to such inams, (2) t favour of the sub inamdars ( being grants from the Crown r in favour of the grantees (3)

## GRANT.

the respondents were granted free from the liability to pay assessment, (4) that the appellant s

Construction—Inam grant of 1611 for doing Acharya purusha service in temple—Grant described as descendant of grant—possession—Limitation

In construing a grant of such antiquity as one made as early as 1611, it is vain to expect useful assistance from evidence of the manner in which the grant was viewed, say, in the present century Where an inam grant made in 1611 is confirmed by the inam commissioner in 1865 on service tenure, that is to say, so long as the service is rendered in a devasthanam, the grant has been made for serving as Acharya

the performance of service The description of the nature of the grant,

declare that the mortgage is void is governed by Art 144 and not by Art 134-B of the Limitation Act The transfer should be regarded as void from the date of the transfer itself, and the possession of the alienee must be deemed to be adverse from that date and it must continue to be adverse A person who succeeds on the death of the alienor in such a case cannot be said to acquire then only a right to the property for the first time The transferee would acquire by adverse possession for over 12 years a prescriptive right under the mortgage, though it might be void when executed (Pandrang Kow and Abdur Rahman, JJ) ADINARAYANA CHETTY v SRIRANGACHARIAR 1940 M W N 404= 61 L W 666

Construction—Saranjan—Sanad—Grant of villages to grantee and his heirs from generation to generation—on general stones, mere life 1939 Dig.

## GRANT.

Col 578 DATTATRAYA v. SADASHIV 185 IO 839=  
12 R B 271

—Jagir—Cis Suttley Jagirs and Conquest Jagirs—  
Punjab

The Cis Suttley Jagirs cannot be treated as analogous to the "Conquest Jagirs" in the tract between the Beas and the Sutlej (*Bhude and Din Mahomed, JJ*)  
DHANWANT SINGH v SANT LAL

A I R 1910 Lah 492

—Jagir—Conquest Jagir—Indication—Punjab

The term 'Conquest Ja  
political services rendered  
(*Bhude and Din Mahomed*)  
SANT LAL.

—Regrant by Government after confiscation—  
Private property seized by Government after the  
Mutiny—Subsequent restoration to original owners—  
Permanent tenancies created by Government after  
seizure—Effect on—Act X of 1858

The attachment of the private property of the inha  
habitants of Delhi and its neighbourhood in 1857 and  
1858 was nothing less than appropriation by the British  
Government who became the *de jure* as well as *de fa* to  
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## GUARDIANS AND WARDS ACT (1890) S 25

—S 7—Guardian not residing within local limits  
of jurisdiction—Appointment of—Discretion of Court  
See GUARDIANS AND WARDS ACT S 9 (a)

A I R 1910 Pesh 14

—Ss 7 and 39—Power of Court to appoint as well  
as to remove

A Court which has jurisdiction under the Guardians  
and Wards Act can remove a guardian as well as  
appoint him Where in the first instance an *ex parte*  
order of appointment is made it can when the matter  
is brought on for consideration be set aside by the same  
Court.

J) MAZHAR ALI KHAN v MST

189 IC 823=13 R A 135=

(H C) 270=A I R 1940 All 315

—S 8 (b)—Right to apply—First cousin of  
minor

A first cousin, once removed, of a minor  
comes within the terms of S 8 (b) of the Act  
and is, therefore, entitled to make an application  
for the appointment of a guardian (*Henderson*  
and *Khundkar, JJ*) SHIPAT SINGH DUGAR v  
MOHINI SUNDARI

I L R (1939) 2 Cal 440=

185 IC 880=12 R C 420

—S 9 (1)—Jurisdiction—Discretionary for  
Court

The fact that a minor is found actually residing at a  
place at the time the application under the Act is  
made does not determine the jurisdiction. It must be  
shown that the minor is actually residing, as required  
by the Act.

Wards Act. The mere  
fact that a minor is found actually residing at a  
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place at the time the application under the Act is  
made does not determine the jurisdiction. It must be  
shown that the minor is actually residing, as required  
by the Act.

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made does not determine the jurisdiction. It must be  
shown that the minor is actually residing, as required  
by the Act.

## GUARDIANS AND WARDS ACT (1890), S 25

—Ss 25 and 19—*Illegitimate children—Application by father for custody—Mother leading immoral life—Proper order to be passed.*

## HIGHWAY.

fact that he is at enmity with the guardian is immaterial. (*Henderson and Khundkar, JJ.*)  
SRIPAT SINGH DUGAR v. MOHINI SUNDARI.

*Money borrowed to improve business inherited by minor.*

Where the income from a business inherited by a minor is the principal source of his maintenance, money borrowed by his guardian for the efficient conduct of that business is money borrowed for the benefit of the minor's estate (*Khundkar and Lodge, JJ.*) ANIL KUMAR DAS v. PROBHASATI MITRA.

44 C W N 1048 = A I R. 1940 Cal. 532.

—S 27—Duties of guardian—Purchase of land for minor—Proprietary of—Agent of *de jure* guardian purchasing property with consent of guardian—Liability to account to minor—Considerations—"Trustee"  
See 1939 Dig., Col 584 SITHALINGA CHETTI v.

—S 41(3) and (4)—*Ward not satisfied by accounts rendered by guardian—Duty of Court*

Where the ward is not satisfied by the accounts rendered by the guardian, it is the duty of the Court to order an enquiry into the accounts. The Court cannot shirk its duty by suggesting a remedy by way of a separate suit in view of the provisions of S. 48 of the Act. (*Roberts, C J. and Dunkley, J.*) ABDUL HAMID SIKKAR v. ABDUL JABBAR.

191 I O 108 = A I R. 1940 Rang. 246.

—Ss. 47 and 48—Provision for maintenance in order appointing guardian—If appealable, See 1938 Dig., Col 718. MT. BHULI v. BAJABAI

I L R. (1940) Nag. 221.

—S 48—*Suit for accounts—Court, if can fix time for filing.*

tion, protection or benefit of the property  
Other sections in the Act place restriction  
guardian's power to alienate or charge it

\*BRAR,

191 I O. 108 =  
A I R. 1940 Rang. 246.

—Ss 39 and 8—*First cousin of minor—*

custom, but such ways can be converted into ordinary

## HIGHWAY

6 B E 891=1940 P W N 829=

A I R 1940 Pat 449

—Village path—Obstruction—Right of action—

Special damage—Proof—Necessity See (

S 91 AND O I R 8

## HINDU LAW

Adoption

Alienation

Applicability

Convert to Christianity

Debts (See also ALIENATIONS)

Family arrangement

Guardianship

Impartible estate

Inheritance

Jains (See ADOPTION)

Joint family

Limited owner

Maintenance

Marriage

Partition

Religious endowment

Reversioner

Stridhana

Succession

Texts

Trusts (See also HINDU LAW—RELIGIOUS

ENDOWMENTS)

Widow

Wills

—Adoption

CEREMONIES

EFFECT OF

ILLATOM

JAINS

LINGAYATS

RESULTS

SHARE OF ADOPTED SON

WIDOW

—Adoption—Ceremonies—Adoptor

son by Brahmins in South India—Dat

essential for validity of adoption See

586 SAMINATHA IYER v VAGESAN

I L R (1910) Mad 98

—Adoption—Ceremonies—Dattabomam—Necessity

in the case of twice born class—If to be simultaneous is

with giving and taking—Performance of dattabomam

subsequently—If relates back to adoptors parties of

Poonam—If Sudras

For a valid adoption among the twice born or re

## HINDU LAW—Adoption

—Adoption—Effect of—Family partnership—

Adoption by widow—If relates back to husband's death

Ordinarily in Hindu Law the rights of an adopted

son in the case of an adop

tion by her is for her

do not relate back to

the case of a trading

such if a person was afterwards adopted his adoption

relates back to the death of the father so that the part

nership is deemed to continue with him added as a

partner from the date of the father's demise (Mahomed

Ahmad Khan C J) KESRI SINGH v HARKANWAR

BAI 187 I C 19,

—Adoption—Illatom affiliation—Incidents of—

Agreement of illatom affiliation—If to be embodied in

regular detailed contract—Inference from facts

The incidents of the very widespread practice of

APPA 1940 M W N 809=

A I R 1940 Mad 761=(1940) 2 M L J 30

—Adoption—Jains—Law applicable—Widow

Powers of adoption—Consent of husband's coparceners

—Necessity—Adoption of daughter's son by widow

Validity without consent of coparceners

Jains are governed in matters relating to adoption

by the Hindu Law except where any custom in viana

—Adoption—Ceremonies—Declaration of accept-

ance of child in adoption by adoptive mother—

Necessity See 1939 Dig. Col 586 RAM NATH

TEWARI v BARE LAL A I R 1940 Oudh 13.

evidence to the contrary it must be assumed that the

ordinary Hindu notions with regard to adoption (that an

adoption confers spiritual benefits on the deceased

ancestors of the adopted son) also prevail among J

## HINDU LAW—Adoption

yats (*Wadia and Divatia*, JJ) LINGAPPA RAYAPPA  
v KADAPPA BAPURAO 42 Bom.L.R. 832=

AIR 1940 Bom 345

—Adoption—Results—Adoptee having natural  
born son before adoption—Right to give such son in  
adoption after his adoption *See* 1939 Dig Col 587  
MARTAND v NARAYAN I.L.R. (1939) Bom 586

—Adoption—Share of adopted son—Natural son  
born after adoption

An adopted son on partition between him and the  
after born natural son takes one fourth of the estate  
(*Nawalkishore*, C.J. Ramnimal and Sukhdeoaram,  
JJ) JASWANTSINGH v KUNJESINGH

1

—Adoption—Widow—A

ted son unmarried—Second  
quently—Validity—If divest

Where on the death of an auras or adopted son the  
estate which has descended to him from his father vests  
in his mother as his heir and she makes an adoption to

## HINDU LAW—Adoption

mandatory direction contained in her husband's will as to  
the way in which her power of adoption is to be exercised  
But a direction to operate as a prohibition against a  
widow adopting a boy as a son to her husband except  
the boy named by him must be explicitly made and  
clearly intended by the husband to limit the discretion  
of the widow for all time and on every occasion in which  
otherwise after his death his widow might validly make  
an adoption But where the direction in the will is  
merely recommendatory indicating a preference merely,  
there is no mandatory direction or prohibition Apart  
from any express restriction in that respect imposed by

As to the boy to be adopted she may adopt any one of  
the sons of my nephews (sons of brothers) other than my  
two nephews 'V' and 'K' according to her choice If they

PATTU ACHI v RAJAGOPALA ILLAI  
1940 M.W.N.

—Adoption—Widow  
husband's nearest agnates  
or not consenting—Valid

The only ground on  
really claim to be consult  
is his interest in the prop  
the family and is only  
purposes of succession  
the consent of her husba  
that the major son of her daughter was not consulted or  
did not consent would not invalidate the adoption made  
by the widow

Per *Somappa J.*—If both agnates and cognates co  
exist the agnates must certainly be consulted in prefer  
ence to cognates

and *Somayya*,

SIMHA RAO

188 I.C. 21

eligible nephews It was contended that the widow

of such a son not being available no adoption was to be  
made The adoption was therefore valid (*Broomfield  
and Divatia* JJ) DAMODAR VISHNU v SHRIRAM  
LAKSHMAN 42 Bom.L.R. 1086

ity to adopt—Con-  
to adopt a boy from  
to the same gotra  
de gotra—Valid ty  
RASIVIDU v ADI  
(1940) Mad 233=

119 I.C. 303=13 R.M. 237

—Adoption—Widow—Authority to adopt—Con

—Adoption—Widow—Authority to adopt—  
Construction—Direction to adopt a son of one of  
husband's nephews except two named specifically—  
Death of all eligible nephews leaving sons—Adoption by  
widow of grandson of a nephew—Validity—Direction  
in will—If mere recommendation or mandatory

In Bombay, a widow has an inherent power to adopt  
a son to her husband under the Hindu law, which she  
can exercise except in so far as it has been expressly  
limited or restricted by her husband A Hindu widow  
under the Bombay school is no doubt bound to obey any

—Absence of refusal by senior widow to adopt or of  
consent to such adoption—Effect on validity of adoption  
*See* 1939 Dig, Col 589 HIRE GOWDU v MUNI-  
ANMAL 187 I.C. 745=12 E.M. 747=

AIR 1940 Mad 5

—Adoption—Widow—Divesting of estate—Adop-  
tion by widow inheriting son's property

An adoption made by a Hindu widow who had in-  
herited property from her son is valid The adopted  
son in such circumstances, would divest the adoptive  
mother of the estate which she inherited from her son



HINDU LAW—Alienation.

Per Grille, J—It is illogical to say that an alienation, which may be valid in part and invalid in part as in the case of an alienation including but not consisting entirely of that which an individual coparcener has a

HINDU LAW—Alienation

dallali or commission agency business cannot be held binding on his sons or their interests in the joint family property, since it is risky and speculative and can not be said to be for legal necessity or benefit of the

(subject to the developments of the right of an individual coparcener to alienate what in strict theory is

the act of a prudent owner to embark upon a risky business such as a dallali business There can be no

theilunge—Alienation not binding on son already existence on date of alienation—Effect

A son born after an alienation of joint property by a Hindu father cannot question the

question

In the case of a mortgage executed by the father who

It is within the competence of a Hindu father to burden the family estate by mortgage for the discharge of that right, he the payment of a st at the rate of ence of any other rate of interest

—Alienation—Father—Mortgage by—Sons when bound—Burden of proof—Duty of alienor—Son's pious obligation to pay father's debt—If arises during father's lifetime—Law in Mysore

1940 O A 1159—1940 R D 611—1940 A W R (H C) 553—A I R 1940 All 507 (F B).

sale or mortgage in order to satisfy the father's private debts not binding on the joint family A mortgage

A distinction has been drawn between litigation undertaken to protect or preserve the estate and a lu

starting new dallali business—Sons—If bound—Legal necessity—Benefit of the family

A mortgage executed by a Hindu father for the purpose of raising money for starting and conducting a new

—Alienation—Joint family—Binding nature—Difference between mortgage and sale See 1938 Dig. Col 750 GANPAT RAO & ISHWAR SINGH I L R (1940) Nag 20.

HINDU LAW—Alienation.

—Alienation—Joint family—Alienation by coparcener without legal necessity—Date of cause of action—

whichever cause of action is in question it belongs to those in existence when the cause of action arises, (4) if a coparcener having such a cause of action sues, he sues for the benefit of coparceners generally (other than the alienating coparcener), (5) if a coparcener is not in existence when such a cause of action arises he cannot sue. Consequently, whether the after born coparcener can or cannot sue depends on whether he was or was not born (in the sense of being conceived and afterwards born) at the date the cause of action arose. If he was then born he can sue, if he was not, he cannot. If a coparcener was alive at the time the cause of action arose and sues for the benefit of all coparceners other than the alienating coparcener, whether alive at the date the cause of action arose or born subsequently. This affects his rights not the rights of the alienee whose share is fixed at the date of alienation and does

born coparcener was born or conceived after the death of the coparcener living at the date of the alienation. But the alienation can be challenged by an after-born coparcener born or conceived before the death of the coparcener living at the date of alienation. Rights are dependent as regards limitation on which the cause of action arises and of action accrues to him by birth. (*Stone, C J., Grille and Bose, JJ*) KASHINATH v BAPURAO  
I L R (1910) Nag 573—  
A I R 1910 Nag 305 (F B)

—Alienation—Joint family—Alienation without legal necessity—Who can quest

*Per Bose, J*—An alienation void from the beginning and so is still family property until the time under S 25, Limitation Act son obtains a right by birth in all therefore in this item as well entitled to sue to recover it on the same way as any other member, in fact it is to have any place the al to be entitled to sue ( *JJ*) KASHINATH v. I

—Alienation—Mar. one of two karta—Sale stranger to family.

An assignment of a decree by one of the two karta of a joint family cannot be challenged by a person who is not a member of the joint family. The assignment is not void *ab initio*, but is only voidable at the option of the other coparceners. (*Fauz Ali and Merdish JJ*)  
RAM KUMAR RAM SARAFF v. MOHAN LAL MAHA RAJ  
6 B R 255—185 I C 788—12 B P 421—  
21 Pat L T 363—A I R 1910 Pat 270.

HINDU LAW—Alienation.

—Alienation—Manager—Facts to be shown by lender—Necessary purpose and necessity for loan. See

each case is whether the transaction is such as a prudent owner in the ordinary course of management would enter into in order to benefit the estate (*Agarwala and Rowland, JJ.*) BAIJNATH TAKUR v SARWAN.  
6 B R 369—186 I C. 438—  
12 B P. 501—A I R 1910 Pat 423.

—Alienation—Manager—Ratification after majority—Requirements. See 1938 Dig, Col. 751.  
GANPAT RAO v. ISHWAR SINGH.  
I L R (1910) Nag 20.

—Alienation—Mortgage by adoptive mother—Suit against adoptive son—It is that part of consideration is not for legal necessity—Sustainability—Sale and mortgage—Distinction See 1939 Dig, Col 596  
PURU-SHOTAM v GANGADHAR. 185 I C. 569—12 B.R. 256.

—Alienation—Necessity—Marriage expenses  
The marriage expenses of a member of a joint Hindu

total over income from estate—Alienation to discharge debts payable out of estate—Validity

Under the Hindu Law a widow has absolute power of disposal of the estate inherited by her. She is not bound by the principle holds good even where there are debts which she is bound to pay, although she is bound to pay the interest on the debts where there is a sufficient surplus. A widow is justified in alienating by way of sale part of the properties of her husband for legal

husband shortly to become due and to alienate her on though the alienation which is at binding on her discretion is to the expect- and Venkita DRANMA.  
18 Mys L.J. 140.

—Alienation—Widow—Alienation in excess of power—Right of reversioner to affirm and take benefit of.

It is a well established principle that a Hindu widow's alienation even in excess of her powers is only voidable at the option of the reversioner, and the latter is entitled to affirm any of her transactions and claim the benefit thereof for the estate, if it should be to his



**HINDU LAW—Alienation**

affirm her transactions (*Varadachariar and Abdur Rahman, JJ*) **SURAYYA v MANGAYYA**

1940 M W N, 19

—*Alienation—Widow—Alienation—Legal necessity proved as regards major portion of the purchase money—Absence of legal necessity for balance—Onus*

Where legal necessity has been proved as regards the major portion of the consideration for an alienation by a widow, the onus of proving its absence as regards the balance would lie on those who seek to question the transaction (*Niyogi J*) **KALARAM v KEWALRAM**

1940 N L J 499=A I R 1940 Nag 396

—*Alienation—Widow—Alienation—Powers*

A widow can alienate the property to which she succeeds from her husband for religious and charitable purposes and for purposes of legal necessity. The test of legal necessity is whether the act is essential and obligatory. The performance of bhāt ceremony was held to be a legal necessity

**GULAB DEVI v. BAN**

**I L R (1940) All 5**

1940 A L J.

—*Alienation—Widow*

In the case of co defined estate in the interest taken as a widow in coparcenary A her life-interest in as she has obtained it dealing cannot in an spirit of the other will be valid during her lifetime and will not affect the interest of the surviving widow even though it is justified by necessity. (*Chatterji and Manohar*) **KHANTA MANDALANI v HEM KUMARI**

190 IC 353=7 B R 3=

—*Alienation—Widow—Alienation—Inheritance inherited by widow—Surrender to Validity—Legal necessity—Reversioners—*

Every Hindu widow who inherits a from her husband as part of her husband perfectly competent to surrender her husband's estate to the landlord in case of legal necessity and to the extent of the interest which she has for her lifetime transfer is good only for her lifetime and will not affect the reversioners (*Agarwala, J*) **S**

**DHANI DEBI v PROLHAD MAHI**

6 B R 912=

190 IC 83=13 B P 172

—*Alienation—Widow—Alienation—Reversioners—*

**HINDU LAW—Applicability**

sale is held to be justified, the mere fact that a portion of the sale consideration was not for any valid necessity would not affect the validity of the sale. It is however incumbent in all such cases, on the purchaser to prove that he acted in good faith and after making reasonable enquiry, accepted the transfer of the property in the bona fide belief that there was necessity for the transfer of the property. The burden lies on the transferee to show that the transfer was a prudent and reasonable act on the part of the transferor (*Iqbal Ahmad and Bappa JJ*) **ISHWAR DEVI v JAGANNATH**

1940 A L J 157=1940 A W R (H C) 180

—*Alienation—Widow—Consent of reversioners—Effect.* See 1939 Dig, Col 597 **KAULESHAR SHUKUL v RAM KISHORE LAL**

185 IC 644=

12 B A 339.

—*Alienation—Widow—Co widows—Power of alienation—Consent of both—Necessity—Religious*

house to fall into a state of disrepair, herself residing with her relations, a mortgage executed by her for the

house

necessity

ILHAD

172

reversion

mesne

found

1939

*Applicability of*

The widow of a Cutchi Memon acquires an absolute estate in movables inherited by her from her husband but

years of the death of the limited owner. A fresh cause of action has accrued to the reversioners after the death

of the widow

bar the second

**SINGH v HAN**

1910 A W

—*Alienation*

*Tests*

The real question

alienations by a

was one which

190 IC 303=13 B S 64=A I R 1940 Sind 117.

—*Applicability—Hindus in particular province—*

**HINDU LAW—Convert to Christianity.**

—Convert to Christianity—Subsequent re conversion to Hinduism—Formal renunciation of Christianity—Pr

—Necessity

Where a  
to Hinduism

formal renunciation or renouncement of the new religion and a re admission to the old It cannot be laid down

**HINDU LAW—Debts**

favour of the same creditor, for the amount due, the liabilities incurred in respect of the transaction of ex-

—Debts—Father carrying on partnership business with stranger—Death of father—Effect—Subsequent

—Debts (See also ALIENATIONS).

ALL ADULTS JOINING.

ANTECEDENT DEBT.

FATHER'S DEBTS

GUARDIAN.

JOINT FAMILY

WIDOW.

—Debts—All adult members joining in borrowing  
—If binds minor coparceners—Presumption as to binding character—Other evidence of proper family purpose  
—Duty of Court to require

To determine the debt is a proper family debt

careful about raising any presumption that the manager must have had the interest of the joint family at heart

members of the family join in incurring a debt the Court may properly raise a presumption that the debt has been incurred for proper family purposes. But the Court must be very careful not to let any supposed or possible presumption of fact lead it into the fallacy of begging the very question which it has to try—whether the debt is binding on the minor who questions it. Even though all the adult members join in incurring the debt the Court must require some other evidence to show that the debt was a proper joint family debt

Where a debt is incurred by the father not for immoral purposes but for the purpose of financing the business upon which he and his son depended for their sustenance and support, the son is liable for the father's debt to the extent of his share in the joint family property (Davis, J C. and Lobo, J) LAKHMICHAND V. AMARCHAND. 188 I C 282-12 R S 277-

A I R 1940 Sind 67.

—Debts—Father—Decree against father personally in suit against father and sons after exonerating sons—Execution against son's share in family property—Right

—C P Code, S 11  
issued against a Hindu father personally had been exonerated can be executed sons' interest in the family property in respect of a decree debt passed against the father. It cannot be said that the dismissal of the suit as against

that the sons are  
left (Lach, C. J.  
KRISHNAN NAIDU  
1940) Mad 815-  
7-51 L W 315-

A I R 1940 Mad 541-(1940) 1 M L J 323.

—Debts—Father—Decree obtained on mortgage by father but property not brought to sale—Suit by sons for declaration that mortgage decree does not bind their rights—Maintainability. See 1939 D G, Col 603. JOGINDAR SINGH V. PUNJAB AND SIND BANK LTD. I L R (1940) Lah 96-188 I C 357-12 R L 393

—Debts—Father—Extent of son's liability.

A son is bound to pay off his father's debts, if not immoral and the fact that the father was not the

were members  
liability. His

on to the family  
share in

of it to  
In such  
against

the joint family property the son  
obligation to discharge the debt

—Ramani J J) RAM KIRPAL

190 I C 215-13 E O 1

150-1940 A W R (C C)

910 O A. 755-1910 O W

## HINDU LAW—Alienation.

affirm her transactions. (*Varadachariar and Abdur Rahman I I*) SURAVYA MANCAYYA

proved

—Abse

—Whe

## HINDU LAW—Applicability.

sale is held to be justified, the mere fact that a portion of the land is held by a Hindu is not sufficient to justify the sale.

be a legal necessity. (*Thom, C. J. and Ganga Nath, J.*)  
GULAB DEVI v. BANWARI LAL.  
ILR (1940) All 555=190 IC  
1940 A L J. 484=1940 f

endowment See 1939 Dig, Col. 597. TEMPLE OF

—Alienation—Widow—Alien

ing inherited by widow—Surrender to landlord—  
Validity—Legal necessity—Reversioners—If bound

Every Hindu widow who inherits a ryot's holding from her husband as part of her husband's estate is perfectly competent to surrender her holding to the landlord in case of legal necessity and to the extent of the interest which she has for her lifetime. transfer is good only for her lifetime and will not affect the reversioners. (*Agarwala, J.*) SURA-

—Alienation—Widow—Setting aside by reversioner—Mesne profits—Right to—Assessment of mesne profits—Date from which awardable—Money found

—Law as to reversioners and reversionary rights—

64—A.L.J. 1940 82nd 117.  
s in particular province—  
f Malabar—If Hindus—  
a school of Hindu law

**HINDU LAW—Convert to Christianity.**

—Convert to Christianity—Subsequent re-conversion to Hinduism—Formal renunciation of Christianity—Proof of

—Necessity for valid  
Where a Hindu

to Hinduism, it is formal renunciation or renouncement of the new religion and a re-admission to the old. It cannot be laid down

insisting on any ritual, it must be held that he was validly reconverted to Hinduism. There is no w. holding that a formal renunciation of Christianity proof of performance of expiatory ceremonies in all cases. (*Mockett and Krishnaswami JJ.*) D1

**Debts (See also ALIENATIONS).**

ALL ADULTS JOINING.

ANTECEDENT DEBT.

FATHER'S DEBTS.

GUARDIAN.

JOINT FAMILY.

WIDOW.

—Debts—All adult members joining in borrowing—If binds minor coparceners—Presumption as to binding character—Other evidence of proper family purpose—Duty of Court to require

Court may properly raise a presumption that the debt has been incurred for proper family purposes. But the Court must be very careful not to let any supposed or possible presumption of fact lead it into begging the very question which it has to decide: the debt is binding on the minor w. Even though all the adult members join in the debt the Court must require some other evidence to show that the debt was a proper joint family debt.

**J) SRINIVASAN v PUTTE GOWDA**

18 Mys LJ 276—45 Mys II O.R. 223.

—Debts—Antecedent debt—Liabilities incurred in respect of an exchange of ancestral property.

Where a Hindu father, his son and grandson exchanged an ancestral village for a village belonging to another and had to pay that person a certain amount representing the difference in the value of the villages exchanged, and being unable to pay this in cash, agreed to discharge a mortgage of that other person and subsequently in lieu of that liability executed a mortgage in

**HINDU LAW—Debts.**

favour of the same creditor, for the amount due, the liabilities incurred in respect of the transaction of exchange.

—Debts—Father carrying on partnership business with stranger—Death of father—Effect—Subsequent

—Debts—Father's debts—Ayyavaharika—Costs

87 IC 861—12 RM 760.

incurred by father for Son's liability.

Where a debt is incurred by the father not for immoral purposes but for the purpose of financing the business upon which he and his son depended for their sustenance and support, the son is liable for the father's debt to the extent of his share in the joint family property. (*Davis, J.C. and Lobo, J.*) LAKHMICHAND v. AMARCHAND. 188 IC 282—12 RB 277.

AIR 1940 Sind 67.

—Debts—Father—Decree against father personally in suit against father and sons after exonerating sons—Execution against son's share in family property—Right

—Debts—Father—Decree obtained on mortgage by father but property not brought to sale—Suit by

decree does not bind

1939 Dig. Col. 603.

D SIND BANK LTD.

C 357—12 RL 393.

—Debts—Father—Extent of son's liability.

A son is bound to pay off his father's debts, if not otherwise, and the fact that the father was not the sole member of the family was not a bar to the son's liability. His

share in the family property which he receives by survivorship on his father's death; it extends to the whole of his share in the joint family property including that portion of it to which he was entitled before his father's death. In such a case, the creditor is only executing the decree against the son's share in the joint family property, the son being under a pious obligation to discharge the debt therefrom. (*Yarke and Bennett JJ.*) RAM KIPPAL v. BHURA MAL. 190 IC 215—13 RO 127.

1910 O.L.R. 550—1910 A.W.R. (CC)

1910 O.A. 755—1910 O.W.

## HINDU LAW—Debts.

—Debts—Father—Immoral debt—Mortgage debt incurred by father to pay son-in-law's debts—If binding on sons.

The payment by a Hindu father of a debt due from his son in-law cannot be regarded as an immoral purpose, and a mortgage debt incurred by the father for that purpose is, therefore, binding on the sons. (*Abdul Rashid, J*) GURBAKSH RAI v CHAIN SINGH.

—Debts—Father—Sons—It cannot be

*Kangas Iyengar, J*) BANK OF MYSORE, LTD v. VEERAPPA 18 Mys L J. 113=45 Mys H C R 26

—Debts—Father—Money borrowed for completing unfinished house—Money borrowed originally under promissory notes—Subsequent execution of mortgage deed to discharge such debts—Liability of shares of minor sons

Where a father borrows money for the purpose of completing an unfinished house, and the money is borrowed originally under promissory notes, and subsequently a mortgage deed is executed to discharge such debts, the liability of the shares of the minor sons is not affected.

*per* preliminary decree—*per* father—Sons impleaded as legal representatives—Objection as to factum and binding nature of debt disallowed—Final decree and sale—Dispossession—Limitation—See 1 v RAWUDU, I L R

—Debts—Father—Mortgage by—Said On—Decree—Sale in execution—Said by—Necessity to prove that debt is 1939 D G, Col. 604 SUGNOA HERMAL, 181

—Debts—Father—Partition—Creditor's right to proceed against son's shares in execution of decree against father alone—Creditor obtaining attachment before judgment before partition—If in better position

After partition the interest pursued in execution of a decree against father alone. If the decree debt joint family, the decree holder against the sons after partition suit, but he cannot proceed by way of execution against their interest in the joint family property. The fact that the decree holder had attached the whole of the joint family property before judgment prior to the partition

## HINDU LAW—Debts.

would not enable him to proceed after the partition against the interest of the sons who were not parties to the suit. (*Burn and Miskett, J.J.*) OFFICIAL RECEIVER, COIMBATORE

—Debts

Liability to account for stranger partner's share of

735=12 R M 740 creditor for time for frequent act of insol creditor's application to adjudication 77 COIMBATORE T D. v. OFFICIAL RECEIVER, COIMBATORE. I L R (1940) Mad 191=186 L C 125=12 R M 589= A I R 1940 Mad. 30

—Debts—Father—Son's liability—Decree against son as legal representative of father—If can be executed against son's share.

A son is under a pious obligation to pay his father's debts, the extent of the father's property in his hands.

—Debt—Father—Son's pious obligation.

Ordinarily it would be the pious duty of the son to pay the debt incurred by his father. (*Ismael, J*) JAGARNATH PRASAD v CHUNNI I L R (1940) All 580= V R (H C) 458=1940 A L J 511= A I R 1940 All 416.

—Debts—Father—Son's liability—Pious obligation

—Debt—Father—Son's pious obligation—Money lawfully received by father subsequently misappropriated by him—Liability of sons

Where a Hindu father has lawfully received money, and the money is not liable under the father by the ability is, on the other hand, recognised where in its origin the debt was not immoral but there was a supervening dishonest act of the father. (*Leach, C J* and *Krishnaswami Ayyangar, J.*) ANANDARAO v. PRESIDENT, CO OPERATIVE

## HINDU LAW—Debts

CREDIT SOCIETY PEDATADEPALLI 52 L W 141=  
1910 M W N 774=A I R 1910 Mad 828=  
(1910) 2 M L J 179

—Debts—Father—Son taking joint property and separate property of father on latter's death—Subsequent insolvency of son—Father's debt—If provable—Right of father's creditor to claim priority over creditors of son See PRESIDENTY TOWNS INSOLVENCY ACT, S. 46 52 L W 89

—Debts—Father—Starting trade—Debt

for—Son's liability—Vyavaharika See

Col 608 VENKATESWARA RAO v AMMA

186 I C 200=12

—Debts—Father—Surety debt—Son's liability—Extent

Under the Mitakshara the son is liable to pay the debt incurred by the father as the result of being a surety for the payment of money lent and for delivery of goods. This liability of the son however, is not higher than the pious obligation that rests on him for the payment of his father's personal debts, and is limited to his interest in the joint family property (*Benril and Varma JJ*) DALGIT SINGH v HARKISHAN LAL 187 I C 152=12 R A 474=

1940 A W R (H C) 14=1939 A L J 1137=

A I R 1940 All 116

—Debts—Father—Suretyship debts of—Liability of sons

Under the Hindu Law of the Mitakshara school a son is liable for the debt of his father on account of suretyship for the payment of money (*Iqbal Ahmad and Bafar, JJ*) KANJESHWAR NATH v BENARES BANK, LTD 187 I C 741=12 R A 567=

1940 A L J 161=1940 A W R (H C) 128=

A I R 1940 All 196

—Debt—Guardian—De facto guardian, powers of

The powers of the guardian of a minor are limited and qualified. They can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it are some of the things to

whom he is dealing that the guardian is acting, in, the

loans on behalf of minor's estate—Pre-existing debt—If necessary—From or by note by mother of minor—

Powers of borrowing for business entrusted to his care—Liabilities of minor—Creditor's right of direct recourse—Minor after majority completely and unreservedly discharging former guardian—Effect of See 1939 Dig, Col 610 RAMANATHAN CHETTIAR v PALANIAPPAN CHETTIAR 169 I C 98=13 R M 157

—Debts—Joint family—Partners—Debts incurred by manager under promissory note—Liability of other members—Minors—If bound

## HINDU LAW—Debts

The manager of a Hindu joint family owning a business has authority to contract debts and pledge the credit and property for purposes of the joint family business, and all the members of the family, whether majors or minors are bound by the transactions of the manager. Where a joint family business exists, and the manager passes a promissory note in the course of that business the plea of absence of legal necessity is not open to the other members of the family. The

—Debts—Joint family—Business—Firm managing agent of company—Letter of guarantee given by manager in respect of debts of company—Legal necessity—Liability of family estate

The manager of a joint Hindu family which has a business has no right to stand surety for the repayment of a debt due by another so as to make the family estate liable. The fact the family firm is the managing agent of a company makes no difference when it is under no obligation to procure moneys for the company. A letter of guarantee given by the manager in respect of the debts due by the company of which the family is the managing

deu, JJ) JAGANNATH GANESHRAM v SHIV NARAYAN I L R (1940) Bom 387=190 I C 73= 13 R B 92=42 Bom L R 451= A I R 1940 Bom 247

—Debts—Joint family—Business—Manager—Borrowings—Binding nature

Where it is found that the money borrowed by a manager of a joint Hindu family, was for a business, which was a family business and which was the main stay of the family and that the money reached the business then the loan is for the benefit of the family—that is an 'actual' benefit to the family. No question of inquiry

—Debts—Joint family—Business—Minor succeed guardian during of minor—If

business as the by a guardian the minor is not liable for the debts incurred by the guardian in the

—Debts—Joint family—Business—Partnership business carried on by some members—Debts—Liability of other members—Sale of family property in execution of debt obtained against partnership firm—Right of other members to obtain declaration that their interest is not affected by execution sale

There is no authority for the proposition members of a joint family would be bound debts contracted for purposes of trade by other

**HINDU LAW—Debts.**

who are not managing members the joint family but who are presented and regarded as in partnership with one another, the partnership firms affect with alone. Sales in execution of such dec regard to the joint family property sold the right, title and interest of the party

**HINDU LAW—Family arrangement.**

not widow—Execution of estate—If binds property, died in B inherited the

perly sold (Annamalai and Lodge, JJ) JAMUNA RAM v HEERALAL, 191 I C. 78=44 C

A.I.R. 1

Debts—Joint family—Coparcener

debt of—Remedy of creditor—Liability of other coparceners. See 1939 Dig, Col 610. BAPUSAHEB NARAYAN v BHAGDATTI S/o A I R 1910 N 29

binding on the appellant and the execution sale consequent thereon was invalid as against him, the decree

to be sold in execution could not be disposed

Document in

ale owner under the absolute estate It into the arrangement

created.

Held, that these circumstances, taken sufficient to raise a presumption that the was raised for payment of antecedent managing member and so was binding on the family

property.

t. MADHO

Deb

Binding

In the c. property, therein so far as it affects minor members of the family. The burden remains the hish compliance with Hindu Law permits the to be taken from

arrangement to confer an absolute estate depends not in the on the Rakh.

739.

ment between separated uncles and nephews claiming

one which tends to ty, to the peace or avoiding of family ng of the honour uncles and nephews is a family arrangement between strangers

chara—Ancestral commission business carried on by father and after his death by elder son—Different yarn business started by elder brother—Debts incurred for—Liability of younger brother—Ratification—Test. See 1939 Dig, Col 611. VENKATARATNAM v SAMBASIVA RAO 188 I C. 815=13 B M. 80.

Debts—Widow—Debts due under promissory note incurred for legal necessity—Sull by creditor on pro-

though they may have separated from the propositor and from one another. (Davis, J. C. and Lobo, J) JHAMATMAL v CHETANRAM.

I L R (1940) Kar. 196=190 I C. 735= A I R 1940 Sind 81.

Family arrangement—Validity—Mistake of parties as to legal rights—One party showing generosity to another—If grounds for invalidating arrangement.

**HINDU LAW—Guardianship**

The fact that there may have been a misconception or a misunderstanding among the parties to a family arrangement as to their legal rights is no sufficient ground for holding it invalid if it has been entered into without duress and without suppression and without suppression necessarily bad because one party has shown some generosity. (*Datt, J C*)  
**MAL : CHETANRAM.**

1901 O 73

—Guardianship—Aliena

**ALIENATION**

—Guardianship—Debts. See DEBTS

—Guardianship—Father alive—Power of Court to appoint guardian for minor members.

In a joint Hindu family the father ordinarily is the karta of the family. A District Judge has no jurisdiction to appoint a guardian of the minor members of the family when there are adults. (*Ismail and Varma JJ*) **JAGANNATH PRASAD CHUNNILAL.**

**ILR (1940) All 580—1940 A.W.R. (H.C.) 458—1940 A.L.J. 511—AIR 1940 All 416**

—Guardianship—Father's right—Nature of—Substitution of another guardian.

Among the Hindus, the father is the natural guardian of his children during their minorities, but this guardianship is in the nature of a sacred trust, and he cannot there person to be entrusted with the care of another, but, however, the authority has been acted upon in such a way as to create associations or give rise to expectations on the part of the infants which it would be undesirable in their interest to disturb. The Court will interfere to prevent its exercise. (*807 (P.C.), Ref to (Skimp, J)*)  
**RAJA SINGH.**

—Guardianship—Paternal grandmother nearest living relation  
**Dig. Col 613**

**AIR 1910 Mad 33 (F.B.)**

acquires them zamindari. If of the estate, zamindari, but income of the separate property of the zamindar unless by express declaration or by acts and circumstances and by necessity.

**RAMANA RAU, JJ** **ZAMINDAR OF SATHUR & VIRA**  
**LAKSHMI ANNAL.** **1910 M.W.N. 105—A.L.J. 1910 Mad 811.**

**HINDU LAW—Impartible estate**

—Impartible estate—Alienation—Powers of holder.

A holder of an impartible estate has power to alienate

succession to it is governed by the rule of primogeniture, the holder of such property governed by the Mitakshara Law has power to alienate it absolutely. This general rule however may be displaced by proof of a family local custom restricting alienation. The onus of proving such custom is, however, upon the person who alleges it. The mere absence of sales in the past does not prove such custom. It is only an equivocal circumstance. It may be attributed to an assumption on the part of the holders of the estate that the law did not permit them to sell or to the absence of any desire on their part to sell. (*Nasim Ali and Rau, JJ*) **KALI PROSARNA & NAGENDRA NATH** **44 C.W.N. 873.**

—Impartible estate—Holder's adopted son taking estate under holder's will—Nature of estate taken—Suc-

holder of an ancestral Mitakshara, succeeds holder, his adoptive

father, he takes an absolute estate in the property which in his hands becomes his self-acquired property with the result that on his death the property passes as self-

**1891 C 757—13 B.A. 119—1910 A.W.R. (H.C.) 300—AIR 1910 All 353**

—Mere separation in food and worship

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**HINDU LAW—Impartible estate**

junior branch prior to the adoption (*Wadia and Divatia JJ*) **LINGAPPA RAYAPPA v KADAPPA BAPURAO** 42 Bom L R 832 = A I R 1940 Bom 345

—Impartible estate—Mitakshara—Succession—Rule as to

The successor to an ancestral impartible estate in a joint Hindu family governed by the Mitakshara is designated by survivorship although he holds the estate according to the custom of impartibility (*Stone, C J and Bose, J*)

—Impa

property—Rule of survivorship

It is well settled that although in the case of an ancestral impartible estate governed by the rule of primogeniture there is no right to claim partition or maintenance or to restrain alienation of the estate, these rights being inconsistent with the custom of impartibility

alienable by him it must be regarded as the joint property of the holder and his family and as passing by survivorship. The holder however, has the right to alienate it by will or gift (*Wadia and Divatia JJ*)

**LINGAPPA RAYAPPA v KADAPPA BAPURAO** 42 Bom L R 832 = A I R 1940 Bom 345

—Impartible estate—Self-acquisitions of holder—Amalgamation of immovable property

It is open to the owner of an impartible estate to amalgamate his self acquisitions of immovable properties with his impartible estate. The question as to

—Impartible estate—Self-acquisitions of movables—If can be incorporated with the impartible estate—Rule of succession thereto

Movable property cannot form an accretion to an ancestral impartible estate. While immovable property can be incorporated with an impartible estate, movable

—Impartible estate—Succession—Rules as to

The successor to an impartible estate which is ancestral property of a joint Hindu family governed by the

subject to the rules by survivor to primogeniture in blood branch of the family (*Rachpal Singh and Bapai JJ*) **SHIAM**

**HINDU LAW—Joint family.**

—Guide in fixing *See* 1939 Dig, Col 614 **MAHA RAJAH OF VENKATAGIRI v RAJA RAJESWARA RAO** 189 I O 123 = 13 B M 144

—Inheritance—Principle preventing estate being in abeyance—Scope of.

The principle of Hindu Law which prevents an estate being in abeyance is an important doctrine of the law of inheritance and it has important consequences as regards adoption. The rule is that the right of succession immediately on the death of the owner of an estate once vested in an heir will

not be divested by the subsequent birth of a person who would have been a preferable heir had he been alive at the time of the death of the 1st owner (*Sir George Kay*)

TEE

**II**

—Joint family

ACQUISITION BY ONE MEMBER  
ALIENATION (*See* HINDU LAW—ALIENATION)  
ANCESTRAL PROPERTY  
BURDEN OF PROOF  
BUSINESS  
COPARCENARY

—MAINTENANCE

615 **RAM LAKHAN v SURAJ PRASAD** 14 Luck 671

—Joint family—Alienation *See* HINDU LAW—ALIENATION

—Joint family—Ancestral property—Sole survivor selling family property and starting business—Profits of business—Character of investment

as part of the joint ancestral property. The investments made and properties purchased from these profits would form part of the ancestral coparcenary property and cannot be claimed as his self acquired property. A son adopted by a widow of a predeceased coparcener can therefore claim a share in such properties as joint ancestral properties of the family (*Wassoodan and Indarnarayan*)

Claim by

red for a

passed on to his successors after him, if any of the

lost or private funds given by father—

right against estate—Amount of maintenance

**HINDU LAW—Joint family.**

collaterals of the original tenant come forward and claim that the holding belonged equally to all the members of the joint family as it existed then, it should be for the persons who put forward that claim to show that the holding was really acquired by the *Karta* of the family on behalf of the whole family and not in his individual capacity. (*Sathe, J.M.*) **GANESH SINGH v. KAPILDEO SINGH.**

1910 R D 471 =  
1910 A W R (B R) 249

—Joint family—Business—Ancestral business—Minor becoming sole owner by inheritance—Manager appointed by guardian carrying on business in the usual course—Liabilities—Minor, if bound—Rights of third parties

Where a minor becomes by inheritance the sole owner of an ancestral business, and the business is

**SUGANCHAND & CO. v. LADURAM.**

1940 N L J 584.

—Joint family—Business—Ancestral business—New business—Distinction—Father starting Rice Mill—

**v. DIVAFUNYAM CHELIJAK.**

188 I C 843—13 R.M. 92.

—Joint family—Business—Business carried on by a member—Presumption of joint family business—If

10 R S, 10 = A I R. 1910 Sind 14

—Joint family—Business—Business started by brothers of Dayabhog family—Son of one of them taking active part in it from commencement—If personally liable for debts of firm.

Where in a business started by a joint family of brothers governed by the Dayabhog school of Hindu Law, a son of one of them takes a very active part and

**HINDU LAW—Joint family.**

and if so, on what legal basis, is essentially one of fact depending for its decision upon the nature and extent of participation as disclosed by the evidence in the particular case. If what the coparcener or junior member is shown to have done in relation to the business is nothing more than what can reasonably be attributed to his interest in the business as a member of the family, there will be no legitimate inference that he intended to undertake a greater liability as a partner in the business. If the part taken by such member in the management of the business goes beyond what can be sufficiently explained by his interest in it as an asset of the family, as for instance when he joins in borrowing for the purpose of the business, it may afford ground for the conclusion that he has become a partner so as to be personally answerable for all debts incurred in the course

ri, J J) ALAGAMMAI  
R 51 L W 374 =  
I R 1940 Mad 880 =  
(1940) 1 M L J 469.  
Debts See HINDU

**LAW—DEBTS.**

—Joint family—Business—Division in status—Continuance of business by manager—Liability of other members for debts and losses incurred subsequent to

See 1939 Dig. Col 616. RAMA-  
NARAYANAPPA

A I R 1940 Mad 339.

mily—Business—Member entering into  
stranger—Joint family business—

**Presumption.**

Under Hindu Law there is no presumption that a business carried on by a member of a joint family in partnership with a stranger is joint family business. It is well

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11-2 P.L.R. 20-  
A I R 1910 Lah. 90

—Joint family—Business—Manager's claim to remuneration for managing business—Sustainability  
See 1939 Dg. Col. 610 RAMACHANDRAPPA &  
NARAYANAPPA

A I R 1940 Mad 339.

—Joint family—Business—Money-lending—If trading business

nature of—Test to determine—Inference of partnership  
attributed.

whether a coparcener who takes part  
is personally liable.

—Joint family—Business—What is—Sons dividing  
joint family property part of it being joint family business—Each son starting business of his own—Sons' business—If new branch of old joint family business.

**HINDU LAW—Impartible estate.**

junior branch prior to the adoption. (*Wadia and Divatia, JJ*) LINGAPPA RAYAPPA v. KADAPPA BAPURAO 42 Bom L R 832=A I R. 1940 Bom 345

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The successor to an ancestral impartible estate in a joint Hindu family governed by the Mitakshara is

**property—Rule of survivorship**

It is well settled that although in the case of an ancestral impartible estate governed by the rule of primogeniture, there is no right to claim partition or maintenance or to restrain alienation of the estate, these

alienable by him, it must be regarded as the joint property of the holder and his family and as passing by survivorship. The holder however, has the right to alienate it by will or gift. (*Wadia and Divatia JJ*) LINGAPPA RAYAPPA v. KADAPPA BAPURAO 42 Bom L R 832=A I R. 1940 Bom 345

—Impartible estate—Self-acquisitions of holder—Amalgamation of immovable property

It is open to the owner of an impartible estate to amalgamate his self acquisitions of immovable properties with his impartible estate. The question as to whether or not there was an amalgamation would depend on the evidence produced in each case. The intention to amalgamate may be either express or implied. The mere fact that a single set of account books was kept for both estates did not disclose necessarily an intention to treat the properties as amalgamated. (*Rachhpal Singh and Bajpai, JJ*) SHIAM PARTAP SINGH v. BALSINI MADHO KUNWAR 189 IC 767—13 E A. 119—1940

—Impartible estate—Self-acq

—If can be incorporated with the  
Rule of succession thereto.

Movable property cannot form an accretion to an ancestral impartible estate. While immovable property can be incorporated with an impartible estate, movable property cannot. Succession to the latter will be governed by the ordinary rules of succession under the Hindu

**HINDU LAW—Joint family.**

—Guide in fixing See 1939 Dig., Col. 614. MAHA RAJAH OF VENKATAGIRI v. RAJA RAJESWARA ROW. 189 IC 123—13 E M. 144

—Inheritance—Principle preventing estate being in abeyance—Scope of.

The principle of Hindu Law which prevents an estate being in abeyance is an important doctrine of the law of and it has important consequences as option. The rule is that the right of succession immediately on the death of the owner, the case of a child *en ventre sa mere* or of child, the estate once vested in an heir will not be divested by the subsequent birth of a person who would have been a preferable heir had he been alive at the time of the death of the last owner. (*Sir George Rankin*) GADADHUR MULLICK v. OFFICIAL TRUSTEE OF BENGAL. 67 IA 129=

I L R. (1940) 1 Cal. 415=51 L W 493=  
1940 M W N. 368=44 O W N. 513=  
1940 O L R. 200=187 IC. 108=71 O L J. 281=  
6 B R. 466=12 R P C. 136=  
I L R. (1940) Kar. (P.C.) 109=42 Bom L R. 621=  
42 P L R. 511=21 Pat L T. 679=  
1940 A W R. (P.C.) 43 (2)=1940 O A. 217=  
1940 O W N. 225=A I R. 1940 P C. 45=  
(1940) 1 M L J. 231 (P.C.)

**—Joint family**

ACQUISITION BY ONE MEMBER.  
ALIENATION (See HINDU LAW—ALIENATION)  
ANCESTRAL PROPERTY.  
BURDEN OF PROOF.  
BUSINESS  
COPARCENARY.  
DEBTS (See HINDU LAW—DEBTS)  
MAINTENANCE (See HINDU LAW—MAINTENANCE)  
FATHER'S POWER TO MAKE WILL  
INSOLVENCY OF FATHER.  
JOINT FAMILY PROPERTY.  
MANAGER  
PRESUMPTION OF JOINTNESS.

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1939 Dig., Col.  
14 Luck 671.  
HINDU LAW—

**ALIENATION**

—Joint family—Ancestral property—Sole surviving coparcener selling family property and starting business—Profits of business—Character of investments and purchases from profits—If ancestral property or self-acquired property

## HINDU LAW—Joint family

collaterals of the original tenant come forward and claim that the holding belonged equally to all the members of the joint family as it existed then it should be for the persons who put forward that claim to show that the holding was really acquired by the *karta* of the family on behalf of the whole family and not in his individual capacity (*Sathe J M*) **GANESH SINGH v KAPILDEO SINGH**

1910 B D 471—  
1910 A W R (B E) 249

—Joint family—Business—Ancestral business—Minor becoming sole owner by inheritance—Manager appointed by guardian carrying on business in the usual course—Liabilities—Minor of bound—Rights of third parties

Where a minor becomes by inheritance the sole owner of an ancestral business, and the business is

## HINDU LAW—Joint family.

and if so on what legal basis, is essentially one of fact depending for its decision upon the nature and extent of participation as disclosed by the evidence in the particular case. If what the coparcener or junior member is shown to have done in relation to the business is nothing more than what can reasonably be attributed to his interest in the business as a member of the family, there will be no legitimate inference that he intended to undertake a greater liability as a partner in the business. If the part taken by such member in the management of the business goes beyond what can be sufficiently explained by his interest in it as an asset of the family, as for instance when he joins in borrowing for the purpose of the business, it may afford ground for the conclusion that he has become a partner so as to be personally answerable for all debts incurred in the course

Debts See HINDU

1910 N L J 664

—Joint family—Business—Ancestral business—New business—Distinction—Father starting Rice Mill—Business stopping before death of father—Major sons liquidating same after father's death and purchasing new mill after some years—Mortgage by adult sons for purchase—If binds minor brothers—If continuation of old trade See 1939 Dig Col 615 **KALANDAR ROWTHER v SIVAPUNYAM CHETTIAR**

188 I O 813—13 E M 92

—Joint family—Business—Business carried on by a member—Presumption of joint family business—If any

—Joint family—Business—Division in status—Continuance of business by manager—Liability of other members for debts and losses incurred subsequent to division in status See 1939 Dg. Col 616 **RAMA CHANDRAPPA v NARAYANAPPA**

A I E 1940 Mad 339

—Joint family—Business—Member entering into partnership with stranger—Joint family business—Presumption

Under Hindu Law there is no presumption that a business carried on by a member of a joint family in partnership with a stranger is joint family business. It is well-

**DOLUHAL v PARMESHARIBAI** 190 I O 375—  
13 E S 75—A I E 1910 Sind 74

—Joint family—Business—Business started by brothers of Dayabag family—Son of one of them taking active part in from commencement—If personally liable for debts of firm

Where in a business started by a joint family of brothers governed by the Dayabag school of Hindu Law, a son of one of them takes a very active part and is in a position to personally manage the business, that person is personally liable for the debts of the firm. That person is personally liable for the debts of the firm. That person is personally liable for the debts of the firm. **CHANDRAI CHANDRA**

(*Chand, J*) **BESPAR SAHAYAK BANK, LTD v. KHILLO** 187 I O 385—12 E L 451—42 P L R 20—  
A I E 1910 Lah 90

—Joint family—Business—Manager's claim to remuneration for managing business—Sustainability See 1939 Dg. Col 610 **RAMACHANDRAPPA v NARAYANAPPA**

A I E 1940 Mad 339

—Joint family—Business—Money-lending—If trading business

**VENKATARAMANA v VARAHALU**

A I E. 1940 Mad 3

—Joint family—Business—Coparcener participating in management—Personal liability of—Extent and nature of—Test to determine—Inference of partnership relation—If new business

The question whether a coparcener who takes part in the conduct of the family business is personally liable,

—Joint family—Business—What is—Said joint family property part of it being joint family business—If new branch of old joint family business—If new branch of old joint family business

**HINDU LAW—Joint family.**

*Quære*—It is extremely doubtful whether, when two sons divide in a joint family property and

185 I O 282=12 R.R. 271=  
A I R 1940 Sind 67.

**Joint family—Coparcener—Attachment of undivided interest of—Death of coparcener—Right of creditor to sell in execution if asserted**

Where in execution of a decree for his personal debts, the undivided interest of a coparcener in a joint Hindu family is attached during his lifetime, it may be sold after his death irrespective of the question whether the order for sale was made before or after his death.

(*Hamilo*  
DAS 1

**Joint family—Coparcener—Execution against undivided share—Form in which relief is to be asked.**

There is no rule which forces a holder of a decree against a coparcener of a joint Hindu family to ask for execution against the whole of the undivided share of that member, when the sale of only a part of it would be enough to satisfy the decree. But it would be

honest coparcener would agree to have the joint family property partitioned. The fact that there has been such

should, unless there are countervailing reasons due to interests other than those of the family calling for consideration, so divide the family property that the property mortgaged by the mortgaging coparcener goes

fraud or collusion does not enter into the story) the mortgagee cannot proceed against the subject matter of

**HINDU LAW—Joint family.**

his mortgage but has substituted for his security any

true position is that the non mortgaging coparceners have in effect obtained the equity of redemption only and are liable in the first place to the mortgagee who may sue them on the mortgage. (*Stone, C. J. and Bose, J.*)

ATMARAM SAO v. BHUPENDRANATH  
1940 N L J. 365=A I R 1940 Nag 149.

**Joint family—Coparcener—Power to make will.**

Under the Mitakshara Law, no coparcener can dispose of by will his undivided interest in coparcenary property. The will will not be operative and on his death the property will pass by survivorship to the other coparceners. (*Tek Chand, J.*)

MT. SANTI v. BANSI  
42 P L R. 147.

**Joint family—Coparcener—Undivided interest of—Attachability—Punjab**

A son's interest in coparcenary properties is liable to attachment in execution of a personal decree against him even though in the Punjab the son cannot claim partition in the father's lifetime. (*Tek Chand and Dalip Singh, JJ.*)

*family—Insolvency of father—Power to exercise in Receiver—Attachment of or to exercise of power of sale—Effect.*

A I R 1940 Mad 525=(1940) 1 M L J. 553.

**Joint family—Joint family property or self-acquisition—Nucleus small—Property acquired by member—Presumption—Rebuttal**

this must mean that the joint property was such as might constitute a nucleus in law, in other words, with its aid the property in question could have been acquired. But even if it be held that the existence of any joint

presumption. (*Mukherjee, J.*) PARIMAL KUMAR v. SUPENDRA LAL.  
44 C.W.N. 892.

**HINDU LAW—Joint family**

—Joint family—Joint family property—Presumption—Advance on mortgage by one member

Where money is advanced on a mortgage by one member of a joint Hindu family it may lead to the pre-

—Joint family—Joint property—Coparcener building upper storey on to ancestral house with his own separate money—Upper storey—If joint or private property

It is apparent that when a member of a joint family builds an upper storey on to an ancestral house when he uses his separate money for construction is made with the aid of the funds which supply to the new structure and its site. The upper storey was ancestral property liable to partition. (*Wadsworth, J.*)

VENKATA SASTRY v. VENKATARAMANAYYA  
1940 M W N 288=51 L W 446= A L R 1940 Mad 626

—Joint family—Joint property—Properties allotted by manager to coparceners for maintenance—Income from—Acquisition by coparceners out of—If joint property or separate property. See 1939 Dig Col 619

RAMAYYA GOUNDAN v. KOLANDRA GOUNDAN  
I L R (1910) Mad 322=189 I O 259= 13 B M 222

—Joint family—Joint property—Property thrown

**HINDU LAW—Joint family**

186 I C 546=12 R C 481=70 C L J 572= 44 C W N 93=A I R 1940 Cal 51

—Joint family—Manager—Accounts—Junior co sharer's right to demand without suing for Dayabhaga Law

Dayabhaga family a junior co sharer has to demand accounts of the karta properties are still joint and on re-nforce it by a suit without praying partition of the joint estate. (*Mitter and Akram, JJ.*) BENOV KRISHNA GHOSH v. KRISHNA GHOSH

(1940) 1 Cal 183=186 I C 546= 6=70 C L J 572=44 C W N 93= A I R 1940 Cal 51

family—Manager—Accounts—Liability to render—Nature and extent—accountability—Limitation Act Art

of a karta of a Dayabhaga joint family is very wide. He is not merely the agent and custodian of the family property and funds. He is no doubt under a liability to account but the measure of that liability is different from that of an agent trustee execu-

A karta is under no obligation to render account to the co sharers at the end of each succeeding year, or even for any period unasked. His liability amounts to this and no more namely that when asked to furnish accounts he must comply. Such is his obligation the corresponding right on the part of his co-sharers is the right to make a demand for accounts from him. The right is not to have accounts without a previous demand. Such being the right the right is infringed only when the demand for account is refused. Art 120

Limitation Act applies to a suit against the manager for accounts—apart from accounts that claimed in a suit for partition—and the suit arises only when a demand for accounts has been refused. It is therefore

wrong to state that a karta is bound to render accounts only for a period of six years before the suit, whatever the circumstances be. (*Mitter and Akram, JJ.*) BENOV KRISHNA GHOSH v. AMARENDRA KRISHNA GHOSH

I L R (1940) 1 Cal 183=186 I C 546= 12 R C 481=70 C L J 572=44 C W N 93= A I R 1940 Cal 51

—Joint family—Manager—Arbitration—Referral to

The manager of a joint Hindu family is entitled to refer to arbitration disputes on behalf of a coparcenary business or firm. (*Bhauraj*) BANSI DAT v. SHAMBU DAT 42 P L R J & K 349

—Joint family—Manager—If can be called to account—Excluded coparceners—Rights of. See 1939 Dig. Col 619 HIRA LAL v. PEAREY LAL

I L R (1939) All 897=12 E A. 23

—Joint family—Manager—Powers of—Referral to arbitration

CLAIM FOR ACCOUNTS

—Joint family—Manager—Accounts—Claim for against karta with and without partition—Difference between

A claim for account against a karta in a suit for partition of joint family property is in a sense incidental to the right to require a partition. Its object in part is to ascertain the movable assets to be divided between the parties to the suit along with the immovable properties. In a sense its scope is wider—to find out misappropriation or misapplication of joint family funds. A claim for account, when joined in a suit to a claim for partition stands on a different footing from a claim for accounts against the karta, when the family is still joint and a right to enforce it by suit, when no partition is claimed therein, must rest upon entirely different considerations. (*Mitter and Akram, JJ.*) BENOV KRISHNA GHOSH v. AMARENDRA KRISHNA GHOSH. I L R. (1940) 1 Cal 183=

### HINDU LAW—Joint family

A manager of a joint Hindu family is competent to make a reference to arbitration without joining other members of the family and the mere fact that one mem-

AIR 1940 Lab 73

—Joint family—Manager—Power of representation  
—Suit for accounts of ancestral property in hands of  
third persons without joining manager as co plaintiff—

| Age | Sex    | Height | Weight | Heart rate | Respiratory rate | Temperature | Blood pressure | Systolic | Diastolic | Mean |
|-----|--------|--------|--------|------------|------------------|-------------|----------------|----------|-----------|------|
| 1   | Male   | 150    | 45     | 70         | 18               | 36.5        | 110/70         | 110      | 70        | 86.7 |
| 2   | Female | 145    | 40     | 65         | 16               | 36.0        | 105/65         | 105      | 65        | 85.0 |
| 3   | Male   | 155    | 50     | 75         | 20               | 36.8        | 115/75         | 115      | 75        | 95.0 |
| 4   | Female | 140    | 35     | 60         | 15               | 35.5        | 100/60         | 100      | 60        | 80.0 |
| 5   | Male   | 160    | 55     | 80         | 22               | 37.0        | 120/80         | 120      | 80        | 93.3 |
| 6   | Female | 148    | 42     | 68         | 17               | 36.2        | 108/68         | 108      | 68        | 88.0 |
| 7   | Male   | 152    | 48     | 72         | 19               | 36.6        | 112/72         | 112      | 72        | 92.0 |
| 8   | Female | 142    | 38     | 62         | 16               | 35.8        | 102/62         | 102      | 62        | 82.0 |
| 9   | Male   | 158    | 52     | 78         | 21               | 36.9        | 118/78         | 118      | 78        | 98.0 |
| 10  | Female | 146    | 41     | 66         | 17               | 36.1        | 106/66         | 106      | 66        | 86.0 |

mai  
Col

$$185 \text{ I C } 580 = 12 \text{ L. } \therefore$$
$$185 \text{ I C } 580 = 12 \text{ L. '}$$

—Joint family—Manager—Power to other members in suits—Extent of

The karta of a joint Hindu family can represent members of the family in respect of transactions entered

father as karta of the family cannot represent his sons in respect of property which they had personally acquired by gift from the mortgagee. (Din Mohammad v. SITA RAM & MUNSHI RAM)

AIR 1940 Lab 262

Joint family—Manager—Third party dealing with—Defect in manager's de jure title—Third is affected with notice of

A person dealing in good faith with the manager of a joint Hindu family is not affected with notice of any defect in his *de jure* for otherwise dealings with such a family would almost be impossible (*Grundt*, 7) LACHMI I v. BAHRACHA RAM 1940 A W R (H C) 524

1940 AWR (HO) 524

—Joint family—Presumption of jointness—Scope and extent

The strength of the presumption of Hindu presumption than in the J/ PIR war

19

—Lim  
invalid See HINDU LAW—REVERSIONER

—Limited owner—Wife becoming full owner under

HINDU LAW—Limited owner.

even a permanent injunction against a daughter who has succeeded to the stridhan of her mother as limited owner, restraining her from alienating or dealing with or dis-

• • • • • ( 17 ) MITTUL

44 C W N 457-

IE 1940 Cal 385

from estate realized

*during lifetime—Manner of devolution*

When the income accruing during the lifetime of a female heir who has by inheritance taken a limited interest in the corpus had been received by the female herself or by some one on her behalf or held by some one who can be regarded as holding the same on her behalf (1) where the female spends the income or disposes of it during her lifetime or by will, her dispositions are valid on the ground that she has absolute property in it (2) where the female is a widow, the income is to be paid to her for her life.

her intention either expressed or necessarily implied

thereto and cannot be separated from it by her subsequent acts or expressions of intention. In the absence of incorporation and the onus is on the party who alleges incorporation the fund would be her personal property and would on her death devolve on her personal heir, (4) where the income is kept with a stakeholder

71 CLJ 392=44 CWN 555=

ALB 1940 Cal 317.

—Limited owner—Income from estate unrealised

A I E 1940 Cal 317.

—Limited owner—Power to alienate—Agreement to

IN RE: A. W. C. / SUB-A 118 1940 All 311

—Limited owner—Daughter succeeding to stridhan  
of mother—Injunction restraining her  
property—Power of Court to grant

The Court will provide the circuit a reasonable apprehension of waste, grant a

and fair to both and whether the limited owner could reasonably have made a better bargain. Preservation

reasonably have made a better bargain. The creation of the

561.

2000 21 22 561.

**HINDU LAW—Limited owner**

—*Limited owner—Suit on mortgage by Hindu female—Pl a of want of legal necessity—If she could be raised*

Where a suit is brought on a mortgage executed by a

titled to be maintained out of the family estate. A co-  
parcener  
for maint  
that reli  
coparcen  
the fami  
most pro  
(Leach,  
CHERUT

—*Maintenance—Daughter—Widowed daughter who is destitute—Father's moral obligation to maintain—Legal obligation of his widow to maintain his daughter out of his estate*

From the earliest times Hindu La  
that there is a moral obligation on a  
a daughter who has no other means  
when she has left his family on a  
moral obligation cannot be made the basis of a suit  
but where the estate of the father has passed to his  
widow it becomes a legal obligation and the daughter  
is entitled to maintenance out of  
the hands of the widow. A Hindu  
bound to maintain out of her

—*Maintenance—Permanently kept concubine—Right of when she is childless*

A permanently kept concubine of a Hindu is entitled  
to maintenance under the Hindu Law even though she  
is childless (Wadsworth, J.)

*v* LAKSHMIKANTAM

51 L.W. 113

—*Maintenance—Widow—*

Right to borrow on reason

family circumstances—Onus

TRIMBAK *v* BHAGU RAI

100 L.C. 600 =

12 R.N. 159

—*Maintenance—Widow—Directions and conditions in husband's will—Value*

If a provision is made by a Hindu  
will as regards the maintenance to  
widow after his death this can only be  
gestion made by the husband as to  
reasonable provision for her maint  
Court is not bound by them. It is not  
Hindu shastras that a widow should  
residential house of her late husband  
stances and betw by all kinds of diff

**HINDU LAW—Maintenance**

rily a widow is not bound to remain at the residence  
of her deceased husband in order to claim maintenance  
provided she does not leave it for unchaste purposes  
and when there is a direction in the will that she must

It is not correct to hold that the amount of main

ground of change in circumstances. See 1939 Dig, Col  
623 KAMESWARAMMA *v* THAMMANNA

187 I.C. 602 = 12 R.M. 737.

—*Maintenance—Widow—Right of—Extent of*  
mand  
Dig,

100 L.C. 600 = 12 R.M. 55.

—*Maintenance—Widow—Right of—If absolute or conditional on her being in need—Possession of separate*

enance to be given to her the income  
property is not a factor to be taken

(Pandrang Rao and Abdur Rah

APPOORNAMMA *v* VEERARAGHAVA

W. 391—A.I.R. 1940 Mad. 547 =

(1940) 1 M.L.J. 608.

—*Maintenance—Widow—Right of—If confined to share of husband alone—Decree for maintenance charging portions of family property—Subsequent partition—*

takes place, she may have a vested right, i.e., instead of  
a right over the entire family she may get only a right  
over those persons who take her husband's share. But  
if, before partition is effected, she gets her right declar-



**HINDU LAW—Maintenance**

properties charged in whose soever hands the properties may be. It is not therefore competent to a member other than the sons of the deceased, to whom an item of the properties charged has been allotted at a partition to claim that the property allotted to him should be held to be free from the charge on the ground that it is only the sons who should be made liable for the widow's maintenance (*Venkataramana Rao and Kunhi Raman JJ*) **DODDA BASAPPA v MALLAMMA**

51 L W 262 = 1940 M W N 603 =

A I R 1940 Mad 458 = (1940) 1 M L J 201

—Maintenance—Widow—Right to priority over personal debts of member of joint family

A widow's right of maintenance over the joint family property has priority over the debts incurred by a member of the joint family for his personal purposes and

**Proper order—Principles**

other hand be awarded the entire costs and the defendants who unreasonably and unlawfully refuse maintenance should be made to bear their entire costs (*Pandurang Row and Abdur Rahman, JJ*) **ANNA POORN**

**under deed of gift for maintenance—If affected**

Where two Hindu brothers make a gift of certain property for life as maintenance in law of one of them the widow is not affected by her unch

**Maintenance—Wife—Right**

adultery and misconduct and live for long time—Claim to maintenance—Conditions See 1939 Dig, Co v **RANGANATHA MUDALIAR**

186 I C 441 = 12 R M 632

—Maintenance—Wife—Separate maintenance—Right to claim—Proof of actual cruelty—Necessity—Husband found not entitled to restitution of conjugal rights due to abandonment—Effect of

It is not necessary that a wife suing her husband for maintenance on the ground of abandonment and cruelty should prove actual decree for separate is logical that if the to a decree for restitution had virtually abandoned entitled to a (*Burn, J*) **SEETH**

A I R 191

**Marriage—**

bride—Bride pregnant

bridegroom before

and void See 1939

v **THIMMI AVVA**

**HINDU LAW—Partition****Partition**

BROTHERS

DIVISION IN STATUS, (See SEVERANCE IN STATUS)

EFFECT

EVIDENCE

INTENTION TO SEPARATE

JOINT ESTATES

MINOR

MOTHER

MOVABLES

PARTIAL PARTITION

PROOF

RE-UNION

SEPARATION OF ONE MEMBER

SEVERANCE IN STATUS (See also INTENTION)

(ARATE)

UPARCNER

—Brothers—Effect of—Status of sons

There is no partition necessarily between the brothers

brothers (*Datt, v*

**NICHALDAS v**

190 I C 271 =

R 1940 Sind 138

presumption of

separation of each member from his own family—Minor

son of one brother—Propriety in claiming partition

from his father

According to the Mitakshara law, in a suit for parti-

an ancestral estate there is no

n between one member of the

nts at separation. Hence, the

against his brothers does not

operate to separate from the father's interest the son's

interest, which remains joint and a portion of the ances-

105 I C 105 = 13 L L 23 =

A I R 1940 Rang 149

—Partition—Evidence—Entry in revenue papers

—Value of.

It cannot be presumed that an entry in the revenue

papers showing members of a Hindu family as owning

land "in equal shares" necessarily shows that they held

## HINDU LAW—Partition

Held that the agreement was not such a clear and unambiguous expression of intention to separate as could effect a severance of the joint status (*Bhide J*)  
**PANNA LAL v RAM RI HIIPAL**

183 IC 770-13 RL 110-AIR 1940 Lah 120  
 ———Partition—Intention to separate—Dismissal of suit for partition—Effect of

Institution of a suit for partition by a member of a joint Hindu family is an unequivocal intimation of his intention to separate and consequently there is a severance of his joint status when it is instituted. A decree may be necessary for working out the result of the severance and for allotting definite shares but the status of the about by his as he obtains a co-claiming a part explained after had been enter on a ground w plaintiff as a member of a joint wholly immaterial to his int has been unequivocally expre The right of partition is the a joint Hindu family and ever is dismissed, it may at the utmost mean that actual partition by metes and bounds was not allowed or that the decree for working out the result of the severance

the definition of the shares of the coparceners actual division by metes and bounds is not

## Partition of joint family

Though a minor member can sue through a next will not give him a decree

**NATHUSINGH v ANA**

———Partition—Extent of—Mother's share of son—Father's power share

The mother's title there has been a division among coparceners by metes and bounds and there is no more joint family or coparcenary property left to which she can look for her maintenance. Where there was a partition by metes and bounds between the coparceners and the sons had

## HINDU LAW—Partition

bounds and that it did not matter that the father and the wives did not divide their shares *inter se* by metes and bounds and that they became tenants in common. It was further held that the father had no power to alienate the shares of the wives which had vested in them without their express consent (*Grille J*)  
**NANURAM v RADHABAI** 1940 NLJ 268

AIR 1940 Nag 241  
 ———Partition—Mother—Share of—If affected by existence of property enough for her maintenance

If a partition takes place between the sons, the mother is under Hindu Law entitled to a share equal to that of a son in the coparcenary property. There is no quali

———Partition—Partial partition—When allowed

According to the general principles of Hindu law a coparcener cannot claim a partition partial as to the

force the plaintiff to coparcenary property  
**SHIVDAN**  
 O Mar LR 20 (Civ)  
 ence of definite evidence of family—Relevancy evidence of separation the separation of the fact of the family and as ul Hasan and Yorke,

———Partition—Separation of one member—Presumption if any regarding status of others

When one of the several members of a joint Hindu family separates from the rest, there is no presumption either that the remaining members have also separated or that they have not. It is a question of fact in each case, and any other fact by evidence (*Zia-*

**AM v SITAL PRASAD**  
 187 IC 571-12 RO  
 OWN 385-1940 O.A.

## HINDU LAW—Partition.

1940 O L R 220=1940 A W R (C C) 179=  
A I R 1940 Oudh 264

—Partition—Separation of one member—Share partitioned—Mother and others continuing to live as joint family—Succession to mother's share—Rules governing

Where on the separation of one of the members of a joint Hindu family his share is partitioned and the

from whose shares it was carved out (Z a ul Hasan, J) SRI RAM v SITAL PRASAD 187 I C 671=

12 R O 378=1940 O W N 385=

1940 O A 344=1940 O L R 220=

1940 A W R (C C) 179=A I R 1940 Oudh 264

—Partition—Separation of one member—Status of others—Partition decree directing division of properties into two shares between plaintiffs and defendants—Status of members *inter se*—Application by guardian *ad litem* of lunatic member for separation of his share made after preliminary decree dismissed as too late—Lunatic member if remains joint See 1939 Dig Col 628 RAM NARAIN SAHU v MIT MAKHNA

## division of status

There is no authority for holding that a person disqualified from claiming a share in joint family property may nevertheless sever his legal connection with that

—Partition—Severance in status—Suit by coparcener to set aside alienation by father or manager

v NARAYANAPPA A  
—Partition—Widow—Right  
Col 631 RANADA KIMHORE RO  
DEBI 188 I C

## HINDU LAW—Religious Endowment

—Religious Endowment

BEQUEST,

CHFLA

DEDICATION

IDOL—REPRESENTATION

MATH.

NATURE OF PROPERTY

SCHEME

SHEBAIT AND SHEBAITSHIP

VALIDITY

—Religious endowment—Bequest—Performing nek kam—If void for uncertainty

Where a bequest was made with a direction to perform nek kam good works it was held that the term good works was exceedingly vague and that hence the bequest would be void for uncertainty (Hamilton and Yorke, JJ) GAWRISHANKAR v MOHAN LAL

187 I C 597=12 R O 385=

1940 A W R (C C) 192 1940 O A 365=

1940 O L R 222=1940 O W N 414=

A I R 1940 Oudh 275

—Religious endowment—Chela—His rights and duties—Distinction between chela and adopted son

See 1939 Dig Col 632 KARTAR SINGH v DAVAL DAS I L R (1939) Kar (P O) 350=

42 Bom L R 1 (P O)

—Religious endowment—Dedication—Inference

See 1939 D g, Col 632 KANHAI

185 I C 334=

12 R A 312 (2)

ent—Dedication—Real or

deity in decid-

a real or only

the real inten-

l and there was

ie owner of the

minating inten-

—Religious endowment—Idol—Representation in suit—Next friend, if should be impleaded

Shebaita do formally stand for and represent the deity in all suits, and the deity need not be separately represented by a disinterested next friend unless the interest of the shebait is adverse to its interest (Am er Ali, J) SRIDHAR JIU v MANINDRA KUMAR MITRA

I L R (1940) 2 Cal 285.

—Religious endowment—Idol—Representation—ship and

ie where

question

nd the

partition

the idol

propose

PULIN

**HINDU LAW—Religious Endowment****SHAMNAGAR JUTE FACTORY CO., LTD**

186 I O 25=12 R C 421

—Religious endowment—Mat

—Who can bring See 1939 Dg

**NAND BRAHMCHARI v BRAHMDE**

187 I O 496=12 R A 541=

—Religious endowment—Nature of property

—Presumption—Property descending from guru to

chela See 1939 Dg Col 634 **KARTAR SINGH v****DAYAL DAS** I L R (1939) Kar (P C) 350=

42 Bom L R 1 (P C)

—Religious endowment—Scheme for management

laid down in deed—If can be interfered with by founder

Where an express provision for the management in

the shape of a definite scheme has been laid down by the

founder himself in the deed of endowment it must be

held that the founder intended to preclude himself from

interfering with the scheme at any subsequent stage

(Thomas C J and Radhakrishna J) **MADHUBAN DAS****v AVADH BEHARI DASS** 15 Luck 303=

190 I C 65=13 R O 107=1940 O W N 28=

1940 A W R (C O) 44=1940 O L R 519=

A I R 1940 Oudh 228

—Religious endowment—Shebaitship—Devolution

—Principles applicable

The principles applicable to a case where the shebait

is dead are as follows—(a) If there is a provision in the

deed of endowment about the mode in which the office

is to be filled up the next shebait is to be appointed in

pursuance of the provision that is the devolution of the

trust depends upon the terms on which it was created

(b) If there was no such provision then it depends on

the usage of a particular institution (c) In the

absence of all these, the office of shebait reverts to the

heirs of the founder Where the founder of an endow-

ment does not nominate any body as the next shebait

nor does the managing committee appoint one though

they have the power to do so on the death of

the founder the title to the property and its manage-

ment devolves on the heirs of the founder.

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—Principles applicable

The principles applicable to a case where the shebait

**HINDU LAW—Reversioner,**property They are only co-sharers of the shebait right  
if therefore, one of the co-shebait pays the entirecould be paid he cannot get any reimbursement from  
the others even if there is a contract or custom (Sen,  
J) **GOBINDA DAS v SHYAMA CHARAN**

44 C W N 1004=A I R 1940 Cal 478

—Religious endowment—Shebait—Right to sue  
co sh bait

There is no reason why as manager of the estate of

the idol one of the shebait cannot sue the others for

expenses incurred in the course of management if it can

be established that there was an obligation in the other

managers to share in the payment of these expenses

(Sen J) 478

—Religious endowment—Shebait—Right to sue

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(Sen J) 478

**Validity**

There is no prohibition against a gift of the office of

shebait when a custom exists whereby the Palas of the

deity are transferable (Panchsridge, J) **PULIN****KRISHNA MUKHERJEE v ADYA NATH MUKHERJEE**

72 C L J 77=45 C W N 85

—Religious endowment—Shebait—Partition of

joint Pala—Legality—Joint Pala—If can be put up

for sale

There is no general legal objection to a partition of

the joint Palas by giving each shebait a turn of worship

in rotation when the shebait has a material and pro-

prietary interest in the offerings But the joint Pala

cannot be put up for sale as it would be wrong to

partition the property of the deity.

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**MANOHA****Reversioner****ELECTION****RELATIONSHIP****RIGHT OF SUIT****SUIT TO DECLARE ALIENATION INVALID TO****PREVENT WASTE****Reversioner—Election**

Ordinarily it may be that a reversioner has an option

to decide when he should repudiate a limited owner's

sale But where the reversioner clearly and unequivocally

acquired the title of the purchaser in his suit

by him that his sale was valid

reversioner It must be treated as an

e sale (Niyogi, J) **BALARAM**

1940 N L J 499=

A I R 1940 Nag 336

—Reversioner—Relationship—Sagotra sapinda—

Who is—Sons of prostitute—Descendants of—If can

claim sagotra sapindaship See 1939 Dg, Col 635,

**KRISHNA MUDALIAR v MARIMUTHU MUDALIAR**

I L R. (1940) Mad 107=129 I C 495

13 B M

**HINDU LAW—Reversioner**

—Reversioner—Right of—Boy alleged to have been adopted by widow—Mortgage by—I alleged adoptee—Right of reversioner to mortgage as invalid—Estoppel—Standing by  
P AC S 41 I L R (1910) Kar 403

—Reversioner—Right of suit—Alienation by widow—Suit to declare invalidity by person claiming to be nearest reversioner—Finding that plaintiff is not the nearest reversioner—Decree on footing that nearer reversioners have precluded themselves from suing—If can be made in absence of necessary allegations in plaint

There is no authority for holding that a plaintiff who sues as the next reversionary heir for a declaration that alienations by the widow of the last male holder are of no effect against the reversioner after the widow's death may be given a declaration on the footing that though he is not the next reversionary heir heirs nearer than they have precluded themselves from suing when the plaint contains no such prayer or claim. Where a person claiming to be the nearest reversioner brings a suit on that footing and that footing fails it being found that the plaintiff is not nearest reversioner to the estate no relief can be granted to him or his heirs. The plaintiff is a remote reversioner because the nearer reversioner widow and have thus precluded

bringing an action for a declaration. The fact that persons found to be the nearest reversioners are on record makes no difference when the plaintiff has brought them on the record as strangers and has sued solely on the footing that he is the next reversionary heir. (Dhale J) BIKAN KUR : RADHA PRASAD  
190 IC 796 = 1940 P W N 342 =  
A I R 1910 Pat 585

—Reversioner—Right to sue for administration of estate vested in widow of last male owner—Estate held by widow—Daughter's suit for administration—Main maintainability

A reversioner under the Hindu Law who has no vested interest is not entitled to maintain a suit for administration of the estate which is vested in the

for administration of the estate vested in the widow (Baum nt C J and Wadia J) BAI VIDVAGAU R V CHATURDAS AMBARAM  
42 Bom L R 876 =  
A I R 1940 Bom 411

—Reversioners—Suit to declare alienation by limited owner invalid—Who can bring

but include the female heir who would succeed immediately if the widow were to die at that moment. Hence the rule that the suit must be brought by nearest pre

**Power of Court to appoint receiver**

In a suit by reversioners to restrain the widow of the last male holder from committing waste of the estate

**HINDU LAW—Succession**

of acts of waste justly appoint a receiver to of the property in which rights (Lobo J)

ZULLEKHANBAI v HAJRANBAI

I L R (1940) Kar 208 = 190 IC 303 =  
13 R S 61 = A I R 1940 Sind 117

—Stridhan—Maiden's stridhan—Rule of succession under Mitakshara—Step-mother—Right of—Kometer agnate of father and nearer cognate—Preference Ser 1939 Dig Col 636 KUMAR RAGHAVA SURENDRA SAHI v BABUL LACHMI KOER  
185 IC 179 = 12 R P 307

—Stridhan—Succession—Anwadheyaka—Widowed daughter and daughter's daughter—Priority—Rule—Mitakshara and Smritichandrika—Preference

With regard to the inheritance of stridhana property, the Mitakshara is the paramount authority in Madras and has to be preferred to the Smritichandrika. In the matter of inheritance to Anwadheyaka stridhana therefore a widowed daughter's right prevails over that of a daughter's daughter. The fact that the daughter is a daughter's daughter to

**of daughter—Right of**

The illegitimate daughters of a Hindu woman are not entitled to succeed to the stridhanam of their mother's mother. The fact that Courts have recognised as between a mother and her illegitimate daughter the right of succession is no warrant for extending sapindaship to other relations (Leach C J and Krishnaswami Ayyangar J)

MOOPANAR

191 IC 60

A I R 1

**Succession**

ATMABANDHUS

BANDHUS

BROTHER AND BROTHER'S SON

BROTHERS JOINT AND SEPARATED

BROTHER'S WIDOW

FEMALE HEIRS

SAPINDASHIP

WIDOW OF PREDECEASED SON

—Succession—Atmabandhus—Mitakshara—Sister's daughter and remoter male bandhu—Preference—Law in Sind

DAS

I L R (1940) Kar 135 = 187 IC 347 =  
12 R S 228 = A I R 1940 Sind 13

—Succession—Bandhus—Female bandhus—

female bandhu is entitled to come in after the male bandhus are exhausted provided of course she satisfies the other conditions required by the Law (Leach C J)

## HINDU LAW—Succession

and *Krishnaswami Aiyangar, J*) JAGANNATHAM v ADILAKSHMI I L R (1940) Mad 731=

1940 M W N 302=61 L W 348=

A I R 1910 Mad 645=(1940) 1 M L J 433

—Succession—Brother and brother's son

Under the Hindu Law, a brother of the deceased would exclude a brother's son from the property left by the deceased. *Rashid, J*

—Succession—Brothers—Joint and separate—Preference—Dayabhaga School See 1939 Dig. Col. 38

JYOTISH CHANDRA CHAUDHURY v PROFULLA CHANDRA SANYAL 187 I O 330=12 R C 567=

A I R 1940 Cal 157

—Succession—Brother's widow and paternal uncle's son's son—Preference

According to the Bombay School of Hindu Law the widow of a predeceased brother takes the inheritance in preference to the paternal uncle's son's son (*Griffith J*) KAMALJIBAI v DASHU 186 I O 553=12 R C 225=

—Succession—Female heirs—Two or more females inheriting from male—Death of one of them—Estate and income—To whom passes

It is settled law that two or more females inheriting from a male take under the Hindu Law a joint estate and on the death of one of them her interest passes to the rest by survivorship, unless by an arrangement between them the right of survivorship had been relinquished. The income of the estate, however, belongs to them absolutely and may on the death of one or all of them have a different direction from the corpus (*Mitter and Roxburgh JJ*) SURENDRA NATH BASU v RADHARANI DEBI I L R (1910) 2 Cal 41=190 I O 723=

71 C L J 392=44 C W N 555=

A I R 1910 Cal 317

—Succession—Sapindaship—Propinquity and religious efficacy—Determining factor in deciding right to succeed See 1939 Dig. Col. 633 KUMAR RAGHAVA SURENDRA SAHI v BABULACHANDRA KOER 185 I C 179=12 R P 307=

—Succession—Stridhana See HINDU LAW—STRIDHANA—SUCCESSION

—Succession—Widow of predeceased son—Rights of

Under Hindu Law a widow of a predeceased son is entitled only to maintenance out of the joint family fund and not to a share in the property (*Dalip Singh and Sale JJ*) SALAMAT RAI v MOKANDIAL 42 P L R 301=A I R 1940 Lab 421

—Texts—Interpretation—Rule laid down in text—Principles of construction See 1939 Dig. Col. 639

MARTAND v NARAYAN I L R (1939) Bom. 586

—Trusts—Trust for benefit of deity and of founder's heirs—Conversion of immovable property into funds—Power of Court to order.

Under Hindu Law a trust for the benefit of a deity and of the founder's heirs is a valid trust and the Court has power to order the conversion of immovable property into funds.

order either separating the properties by metes and bounds or by sale and division. In a proper case the Court has power to order conversion irrespective of any suit or proceedings in the nature of administration (*Ameer Ali, J*) SRIDHAR JIN v MANINDRA KUMAR MITRA I L R (1940) 2 Cal 235

—Trusts—Trust in English sense—If recognized in India—Creation of trust in favour of deity

Trust in the English sense (i.e.) a disposition of property for the benefit of a person in which the legal

## HINDU LAW—Widow

ownership is vested in the trustee, has become an integral part of the Hindu system as administered by the Courts in India. A Hindu can, therefore, create a "trust" for the benefit of a deity as distinguished from an "endowment" which means a disposition for the benefit of the deity by which the property is given to

J) SRIDHAR JIN v MANINDRA KUMAR MITRA I L R (1940) 2 Cal 235

—Trusts—Trust in favour of *sraddha* ceremonies of testator's family—Validity

Under the Hindu Law the execution of a trust by a testator with the direction on the trustee to do and perform all *sraddha* and other ceremonies of the members of the family of the testator in such manner as the trustee shall see fit is invalid (*Panchridge J*) SRI KISSEN v LARACHAND 190 I C 405 13 R C 162=

A I R 1910 Cal 228

—Widow

ACCRETIONS

ACQUISITION BY

ADOPTION (See HINDU LAW—ADOPTION)

ADVERSE POSSESSION

ALIENATION (See HINDU LAW—ALIENATION)

COMPROMISE BY

MAINTENANCE (See HINDU LAW—MAINTENANCE)

MUTATION IN FAVOUR OF

NATURE OF ESTATE

POWERS OF

REPRESENTATION OF ESTATE

RIGHT OF PARTITION (See HINDU LAW—PARTITION)

REVERSIONERS (See HINDU LAW—REVERSIONERS)

SURRENDER

—Widow—Accretions—Test

In the absence of anything to show that the widow has treated the accumulations as part of her husband's estate the savings are her personal property (*Pollock, J*) RUPABAI v NOKHESING 190 L C 591=

1910 N L J 292=A I R 1940 Nag 236

—Widow—Acquisitions by—Nature of—If accretions to estate or absolute property of widow—Rule as to

It is well established that where a Hindu widow purchases property with savings from her own income, such property is *prima facie* her absolute property. But where the purchase is made with the aid of the husband's estate, whether it be by sale of a portion thereof or by money raised on the security thereof, the reversioners are entitled to claim that the property thus purchased must be held to form part of the husband's estate.

Under Hindu Law a widow is entitled to the property acquired by her husband's estate.

source is not known, and the blended fund is so invested in re-acquiring what till recently was undoubtedly part of her husband's estate it is a fair inference that the acquired property must be taken to be part of the husband's estate (*Varadachariar and Alder Falkner, JJ*) SURAYYA v MANGAYYA 1940 M W N 19

—Widow—Adoption See HINDU LAW—ADOPTION

—Widow—Adverse possession by—Nature of acquired—Test—Unrecorded mutation—Entry



## HINDU LAW—Succession

*Rashid, J.J.*) MURLI DHAR v AMAR NATH  
42 P L R 348  
—Succession—Brothers—Joint and separated—  
Preference—Dayabhaga School See 1939 Dig. Col. 38  
JYOTISH CHANDRA CHAUDHURY v PROFULLA  
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STRIDHANA—SUCCESSION

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fund and not to a share in the property (*Dalip Singh  
and Sale J.J.*) SALAMAT RAI v MOKANDAL  
42 P L R 301 = A I R 1940 Lab 421

—Texts—Interpretation—Rule laid down in text—  
Principles of construction See 1939 Dig. Col. 639  
MARTAND v NARAYAN I L R (1939) Bom. 586

—Trusts—Trust for benefit of descendant of found-  
er's heirs—Conversion of immovable property into  
funds—Power of Court to order.

Where by a disposition in the form of an English

## HINDU LAW—Widow.

case whether the benefactor intended to adopt the one or  
the other method, trust or endowment' (*Ameer Ali,  
J.*) SRIDHAR JIN v MANINDRA KUMAR MITRA  
I L R (1940) 2 Cal 285

—Trusts—Trust in favour of sraddha ceremonies of  
testator's family—Validity

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testator with the direction on the trustee to do and  
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KISSAN v TARACHAND 190 I C 405 = 13 R C 162 =  
A I R 1910 Cal 228

—Widow  
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the extent to which nothing is known as to the source of

in India—Creation of trust in favour of deity.  
Trust in the English sense (*cf.*) a disposition of pro-  
perty for the benefit of a person in which the legal

—Widow—Adverse possession  
acquired—Ten—Unrecorded muta-



## HINDU LAW—Widow.

tion register—Value See 1939 Dig, Col 640 RAM  
SARUP SINGH v MOHAN SINGH  
ILR (1939) All 713=165 IC 783=12 EA 318  
—st—Effect  
UL v RAM  
EA 339  
LAW—

—Widow—Compromise by—Binding nature of  
A compromise entered into by a Hindu widow *bona fide*, for the benefit of the estate and not for her personal advantage, binds the reversioners quite as much as a decree against her after litigation 49 IA  
342 Rel on (Panchridge J) REN KABALA DEVI  
v HARIPADA BANERJEE 44 CWN 612

—Widow—Mutation in favour of—Presumption  
if any  
There is no presumption that mutation in the name of a Hindu widow is by way of consolation. Hence whoever raises the title of—  
prove it  
KUNWAR  
12 RO 3

—Widow—Maintenance See HINDU LAW—  
MAINTENANCE

—Widow—Nature of estate—Possession by widow  
—If creates absolute title in her—Test See 1939 Dig

widow as heir of husband—Compromise  
property to widow in absolute right—Valid  
ultimate actual reversioner—Principles—  
limited interest See 1939 Dig Col 6  
PILLAI v THAYAMMAL

13 RM 200=1940 MWN 632  
—Widow—Representation of estate—Reversioners  
When and when not bound—'Necessity' meaning of  
In a suit brought against a Hindu widow for the

was for valid and legal necessity or not. If it was for legal necessity it will be binding on the reversioners. But where the alienation is not for necessity it is in no way binding on the reversioners and they would be entitled to challenge it either by a declaratory suit during the lifetime of the widow or by a suit for possession at her death. The power of a Hindu widow or other

as to the whole body of reversioners. The word 'necessity', when used in this connection, has a somewhat special and almost technical meaning. It does not mean actual compulsion but the kind of pres-

## HINDU LAW—Widow

sure which the law recognizes as serious and sufficient (Jsmail and Verma, JJ) TFI SINGH v HANNU PRASAD 1940 ALJ 479=  
1940 AWR (HC) 434=AJR 1940 All 433  
—Widow—Reversioners See HINDU LAW—  
REVERSIONERS

—Widow—Right of—Partition See HINDU LAW—  
PARTITION

—Widow—Surrender in favour of daughters—  
Liability of daughters for debts due out of the estate  
See 1939 Dig, Col 643 SHIV SHIDDA v LAKHMI  
CHAND 187 IC 96=12 RB 412

—Widow—Surrender—Nature and effect of  
The basis of the doctrine of surrender by a Hindu widow is the effacement of the widow's interest and not the *ex facie* transfer by which such effacement is brought about. By surrendering the estate, the widow brings about the same result as would happen in the case of her natural death and the next heir steps into the inheritance without any act of consent or  
The fact that the immediate heirs who take only a limited interest does not make any difference

and a surrender in favour of such limited heirs is equally effective though certainly the interest which they take in the property is not thereby enlarged. The voluntary effacement is sometimes referred to as a surrender some times as a relinquishment or abandonment of her rights  
renunciation  
The surrender  
engagement is  
Reasonable  
widow regard

—Widow—Surrender—Validity—Burden of  
proof  
Per Mukherjee, J—A Hindu widow has only restricted powers of alienation with regard to properties she

72 CLJ 208  
—Widow—Surrender—Validity—Motive of widow  
—Protection of husband's estate—If relevant consideration

Per Mukherjee, J—Protection of the husband's estate is no relevant matter for consideration in determining the validity of a surrender by the widow. What

Per Mukherjee, J—A surrendering female heir can always reserve for herself a right to be maintained out of the estate which she surrenders, but the maintenance can be enjoyed by her only during her lifetime. It



## HINDU LAW—WILL

property after my life time I am at present managing that in doing so he 'book consent of certain persons provided that "after my death whatever arrangements to be made of my property for four persons"

*Held*, that *T* was not the absolute owner of the property under the will the words "as owner" used in the will qualified the *vakuf* made by the testator himself and not the *vakuf* of *T* and the intention of the testator was not to make *T* the absolute owner; (2) that it was only when there was a clear intention on the part of the testator by the use of the word "*malik*" or the words "with absolute rights" that one could infer an absolute devise and it would be only in such a case that subsequent restrictive words would not cut down the absolute nature of the bequest, (3) that *T* was neither given any life estate in the property nor had any personal right to the property during his lifetime and the

being vague and indefinite and void under the Hindu law the whole disposition was vitiated and the property therefore devolved on those persons who would be the heirs if the testator had died intestate. (*Dinatra, J*) **TRIKAMBHAI JIBHAI v. FULABHAI KALIDAS** 188 I.C. 123 = 12 E.B. 492 = 42 Bom.L.R. 180 = A.I.R. 1940 Bom. 155

—Will—Construction—Devise of all properties to son—Subsequent clause if son or his son has no child properties shall go to idol—Estate taken by son—Absolute or conditional—Executory devise in favour of idol—If male

The disposal clause in a will was "I have bequeathed to my son P. P. the right to all my properties and moneys, etc. and he shall alone enjoy them. If he or his son has no child the said properties shall pass to Subramaniaswami at Tiruchendur."

*Held*, that the bequest to the son was unconditional and conveyed an absolute estate to him and that the last sentence was not intended to operate as a condition affecting the character of the bequest made in favour of the son. There was no executory devise under the will in favour of Subramaniaswami (*Pondrang Row Ashur Rahman, J*) **TIRICHENDUR SRI SUBRAMANIAM SWAMI TEMPLE v. RAMASWAMI PILLAI** 52 L.W. 446 = 1940 M.W.N. 981 =

—Will—Construction—Provisions belong to widow after testator's death

A.I.R. 1940 Pat. 194  
**HINDU LAW OF INHERITANCE (AMENDMENT) ACT (II OF 1929)**—Scope and applicability

The Hindu Law of Inheritance (Amendment) Act (1929) applies not only to persons who were heirs under the sub-schools of the Mitakshara but also to son's

—Sister—Meaning of—If includes half sister

"Sister" in S. 2 of the Hindu Law of Inheritance (Amendment) Act cannot be interpreted as including a half sister. The Act must be strictly construed and words must not be read into it which are not there. The Legislature must, while passing the Act, be presumed to have been well aware of the well recognized distinction existing under the Hindu Law between a sister and a half sister, and if it was their intention to include a half sister also within the new class of heirs, she would have been specifically mentioned in S. 2 (*Fazl Ali and Chatterjee, J*) **DAULAT ALI v. BHIMUNDOO** 19 Pat. 382 = 169 I.O. 883 = 13 E.P. 147 =

G.B.R. 884 = 21 Pat.L.T. 660 = 1940 P.W.N. 65 = A.I.R. 1940 Pat. 310

## HINDU WOMEN'S RIGHT TO PROPERTY ACT

—Buildings erected by husband on wife's land—Wife's right to

Buildings and other such improvements do not by the mere accident of their attachment to the soil become the property of the owner of the soil. If he who constructs the building or makes the improvement on another's land is a mere trespasser he cannot claim compensation from the owner of the soil nor has he the right to remove them. If however he was in possession of the land under a bona fide title or claim of title he can either remove them or

positions. The husband never intends in such a case to

He intends to make the building of his wife, more building also belongs to the land (Mitter and

Abraham, J.)

The plaintiff and defendant were Hindus. Plaintiff married the defendant in 1916. The defendant was then a girl of 9 years. In 1921, Plaintiff married a second wife who too was an immature girl, but who attained puberty within a few months and ever since lived with the plaintiff. Defendant attained puberty in 1922 or 1923, but continued to remain with her parents

## HUSBAND AND WIFE

In 1926, plaintiff for the first time wrote to the defendant and her father calling on the father to send the defendant to his house on one or two auspicious days and threatening legal proceedings if they refused. The defendant's father replied expressing his anxiety that the defendant's married life with plaintiff should begin

plaintiff had taken possession, he sent a lawyer's notice demanding that the defendant should come and live with him and he followed up the notice with a suit for restitution of conjugal rights. The trial Court refused to grant a decree. On appeal,

Held that the relief was discretionary having regard to the facts that the plaintiff to do with his wife for 20 years after at least 13 years after she attained puberty plaintiff had definitely rejected the offer made by the

as justified  
Court had  
JAYARAM

W 768—  
AIR 1940 Mad 777=(1940) 1 M L J 877

Restitution of conjugal rights—Marriage—Proof of

## INCOME TAX ACT (1922) S 2

1940 O L R 451=1940 P W N 683=  
1940 M W N 918=42 Bom L R 997=  
1940 A L J 656=72 C L J 157=189 I O 154=  
1940 O W N 531=1940 O A 577=  
1940 I T R 442=52 L W 231=44 C W N 920=  
AIR 1940 P C 124=(1940) 2 M L J 577(P C)

charges a tax in relation to annual value of land is charging a tax on income. *Prima facie*, a tax on the annual value of land is not a tax on income.

*Amia J*—In determining the nature of a tax though consideration may be given to the standard on which the

actor (*Beau*)  
SIR BYRAMJI

12 E B 379=  
3 Fed L J (H C) 25=42 Bom L R 10=  
1939 I T R 670=AIR 1940 Bom 65(F B)

S 2—Agricultural income—Mokarrari lease by zamindar—Subject of lease comprising agricultural and non agricultural land—Amounts paid by mokarrari to zamindar—Taxability

The assessee a zamindar, received a large income from mokarrari or permanent lease holders. The mokarrari leases comprised non agricultural land

## Appointment—Old persons

It is not wise save in very exceptional circumstances to appoint for the first time an *inamdar* or *Zaildar* whose age is 60 or more. *Garbett F C*) MALIK ABBAS KHAN v. GHULAM H. IDAR, 19 Lab L T 25

INAMS—Erfan Aizment—Onus

agricultural and the rent was fixed on that basis (*Harris C J* and *Faul Ali J*) BHUVESHWARI KUAR v. COMMISSIONER OF INCOME TAX B & O

1940 P W N 702=1940 I T R 550

Ss. 2 24 and 66 (3)—Salami or nazarana—If rent and income—If agricultural income—Determination

INCOME TAX ACT (XI OF 1922)—Construction—Uniform construction in all provinces—Desirability of *See* INCOME TAX ACT S 24 1940 I T R 1

Constructs—English definition—Applicability  
Caution is necessary in applying decisions on a British Income tax Act to the Indian Income-tax Act (*Lord Normand*) COMMISSIONER OF INCOME TAX, BENGAL v. MAHATIRAM RAMJIDAS. 67 I A 239=

1 L R (1940) 2 Cal 215=13 E P O 25=

1940 A W R (P C) 117=6 B E R 794=

Y. D. 1940-44

I rule that  
must be  
income  
d circum  
ay in cer  
tain cases be payment of rent in advance but in other cases it may well be a lump payment for the transfer of the leasehold interest. The nature of the payment whether capital or income cannot be decided as a question of law, but can only be decided after a full investigation of all the facts relating to the settlements for which the sums are payable. It must also be ascertained whether the holdings settled are held as or unconnected with agriculture. If they are with agriculture, the payments would

## INCOME TAX ACT (1922), S 2

income (*Harries C J and Fast Als J*) BHUNESH  
WARI KUAR : COMMISSIONER OF INCOME TAX  
& O

—S 2 (1)—  
annual payment m  
rendered in the pa  
Liability to tax—

income is sent to the said ancestor and afterwards to

under the management of the Court of Wards who  
decided to resume the lands and declined to give the  
widow a new lease though they conceded her a  
member of the family to consideration of  
recognition of that claim the Court of W  
widow an annual allowance of Rs 4  
thought to be the probable amount of profit which she  
would have derived if she had been given a renewal of the

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—S 2 (1) Agricultural income—Test to  
determine—Nature of lease letting out land or nature  
of use to which land is put—Patri lease by zamindar—  
Part of land leased used for non agricultural purposes

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## INCOME TAX ACT (1922), S 2

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tax Act (*Debhukher, C J and Mukherjee, J*) BIJAY  
OF BURDWAN In re  
1940 I T R 378  
in arrears of rent payable  
Act—If agricultural in

collected by a landlord  
for S 67 of the Bengal  
at agricultural income as  
defined by S 2 (1) (a) of the Income-tax Act and is  
therefore assessable to income tax Such interest is

interest is payable for the use of money  
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t but by reason of a statutory provision  
(*Harries C J and Mukherjee, J*) RADHIKA  
WARDS ESTATE, In re  
1940 I T R 400

—S 2 (6 A) and (14)—Firm—Partnership bet-  
ween Hindu coparceners in individual capacity and him  
self as manager of the family—If partnership in law  
—Right to be registered.

partnership could only be treated to be in fact between

**INCOME TAX ACT (1922), S. 3.**

the member of the joint family and the Karta as the other contracting party which in this case was the same person. (*Harriet, C. J. and Manohar Lal J.*) 10KE  
NATH PRASAD DHANDUANIA & CO. v. CIT

189 I :

6 BR 77 :

—S 3—'Association of individuals'—If embraces association of corporate bodies—Co-operative Central Bank composed of persons and Co-operative Societies—Bank also carrying on banking business—Mode of assessment—If mutual be Assessment as association of individuals—

The assessee, a Co-operative Central Bank under the Co-operative Societies Act, cc shareholders of whom 138 were persons Co-operative Societies. The main object of the assessee

Co-operative Society being exempt from income-tax of India under into account in see was assessed

ation of individuals," under S 3 o rate which would be payable on an income. The assessee challenged the correctness and at his instance the Income Tax made a reference to the High Court the Income tax Act

Held, (1) that the assessee Bank was an "association

**INCOME-TAX ACT (1922), S. 3.**

duals, namely, a Hindu undivided family and company which appear in the section. An association of individuals resembling a Hindu undivided family is an of the persons 3, is a ilar facts

and circumstances of each case. The assessee was a Hindu father, four sons two of whom were minors, and the wives of two of the sons. In 1928, the father died, which was

In 1933, the he members of as purchased in slding was con- jointly for the

purpose of earning income, which, according to the

—S 3—Hindu undivided family—Joint family consisting of father and son—Death of father in 1933 leaving widow—Son and widow (step-mother) sole surviving members—Mode of assessment—Hindu

assessee as an individual or on the assessee and his

Meaning of—Hindu joint family—Partition—Sale of family property and purchase of new property—Building constituted thereon managed jointly by members—Liability to assessment as association of individuals.

The words "association of individuals" in S 3 of the Income tax Act must be construed with reference not merely to the word "firm" immediately preceding them, but with reference to the other associations of individuals

1 L.R. (1939) Lah. 520-187 I C 678-12 P.L. 486-A.I.R. 1940 Lah. 113 (F.B.)

—Ss. 3 and 4 (3) vii—"Income"—Set by widow for possession of movable and immovable property left by her husband—Decree in favour of widow including certain movable properties and also the wrongful detention of movables—Return towards damages—Taxability. See 1939

## INCOME TAX ACT (1922), S 3

COMMISSIONER

KUMARI DEBI

186 I J 2

—Ss 3 6 and 9—*Private wakf—Income—Assessment—Mode of—It to be taxed in the hands of trustee or in the hands of beneficiaries—Trustees—If 'owners' of income—If association of individuals—Notice served on managing trustee—It proper—S 2 (12) (a)*

A Mahomedan I H executed a wakf deed on 17-2-1932 which made certain immovable properties the subject of wakf after the payment of rates and taxes and 10 per cent of the net income into a depreciation fund for repairs Rs 35 per month was to be spent on the Dawoodi Borah Ma'arrah in Karachi and the balance of the net income Rs 300 per month was to be paid to the wife of the settlor A Rs 50 per month to each of his four daughters while the residue was to be divided in equal shares among his four sons. The settlor appointed himself and his four sons as trustees. After the extinction of all male descendants in the direct line the wakf property was to go to purpose charities such as Muslim Musaffirkhanas of the Dawoodi Borah or other uses such as the maintenance or need of the Borah community.

*Held* (1) that a difference must be made between a private wakf created if not primarily at least in part for the maintenance of the settlor's family and a wakf created for charitable or religious purposes falling within

other quasi secular purposes to that extent the income was liable to taxation (3) that in the case a private wakf like the present the estate of the settlor and his beneficiaries (4) that for purposes of S Income-tax Act the trustees could not be the owners of the income (5) that the case was bound up with the beneficiaries taxed in their hands (6) that the trust constituted an association of the meaning of S 3 of the Act but make them owners within the meaning.

*Obiter*—That a notice served on trustee was properly served under S 2 with S 63 of the Act (*Davis v Commissioner of Income Tax, F H M J I HAKIMI*)

—S 4—Capital or income—Salat If taxable—Nature of *See INCOME 4 AND 66 (3)*

—S 4—Income—Permanent

Salami or premium paid by lessee to the lessor—Capital or income—Taxability *See 1939 Dig Col 652* COMMISSIONER OF INCOME TAX B & O v VISHESHWAR SINGH 187 I C 691-12 R P 629-6 B R 524

—S 4 (1)—Accruing or arising

—Railway Company—Receipt of g capital in England from Secretary Amount subsequently recouped out in India—Interest received—Assessability to Indian Income tax

The assessee the M & S M Railway Company, Ltd was a company registered in England in 1882. By a contract entered into with the Secretary of State for India in 1882 the latter provided the land and

## INCOME TAX ACT (1922), S 4

COMMISSIONER

KUMARI DEBI

186 I J 2

and working of a undertaking were to be which was to be credited to the Secretary of State for India and the latter undertook to pay interest on this amount at 3½ per annum out of the revenues of India. The interest was only paid every half year to the assessee and the Secretary of State recouped the interest at the end of the year out of the profits of the undertaking and the surplus profits were divided between the Secretary of State and the assessee according to their respective shares in the capital of the undertaking. In 1908 the capital contributed by each party was increased but the original contract subject to certain variations and modifications continued to govern the relations between the company and the Secretary of State. All the moneys received by the company in the course of the working of the railway were to be paid over to the Secretary of State. The company was not entitled to use any of the receipts of the undertaking for the purpose of meeting working expenses which were met from a grant made each year

of guaranteed interest in the course of the year, and the surplus had always been more than sufficient to enable the Secretary of State to reimburse himself. In the year of account 1937-1938 the company returned an income of Rs 24,36,479 for the year 1936-37. In the company deducted Rs received from the Secretary of State guarantee. The Income tax the deduction and sought to Rs 23,33,333 also to income tax

in the hands of the company *Held* on reference (1) that all the profits of the

—Ss 4 (1), 42 and 43—Profits and gains—Agent—Business connect on—Non resident firm acting as managing agent of foreign company and having

—S 4 (2)—Applicability—Foreign profits—Remittance to assessee creditor in Native State by funds and cashed by creditor in Native State—If profits received in British India

Unless profits made abroad are received in British India there can be no question of taxation here in British

## INCOME TAX ACT (1922), S. 4

India under S. 4 (2) of the Act as it stood before its amendment in 1939. Where a remittance of foreign profits is made by the delivery of a hundi to the assessee outside British India, who is cashed by him outside British India, and the money never comes to British India, it cannot be taxed in British India. The assessee, a resident of British India, carried on money-lending business in British India, at Okkan in Burma and also at Mysore in the State of Mysore in 1936-1937, the

treated this amount of Rs. 6,290 as a remittance of foreign profits to British India which discharged in part the assessee's indebtedness to S.

*Held*, that the amount, though paid out of foreign profits never came to British India and could not therefore be included in the total income of the assessee for purposes of income tax (*Leach, C. J., King and Krishnaswami Ayyangar, J.J.*) COMMISSIONER OF INCOME TAX, MADRAS v. MU

—S. 4 (2)—Construction—*borrowed by branch business out of remittance to British India—C remittance of profits from another foreign branch—Remittance—If remittance of profits*

The assessee, a Nattakottai Chettiar, having his headquarters at Karaikudi in British India, was a partner with two other Chettians in a money-lending business carried on in two places T and K, in the Federated Malay States. The business at K had resulted in considerable profits before the business at T was started on 12th December, 1936. On 14th December, 1936, the partners borrowed from another Chettiar at T a sum of Rs. 27,500. This sum was divided between the partners the assessee receiving as his share Rs. 7,500, which his agent at T then remitted to Karaikudi. To pay off the lender, the assessee and his partners transferred profits from the business at K to T, and out of the remittance of profits, they fully discharged the loan. The Income-tax authorities treated the remittance of Rs. 7,500 as a remittance of profits liable to tax. The assessee contested this.

*Held*, that the sum of Rs. 7,500 did not represent a remittance of profits and was rightly included in the assessee's assessment as such. (*Leach, C. J., King and Krishnaswami Ayyangar, J.J.*) COMMISSIONER OF INCOME TAX, MADRAS v. MU

—S. 4 (2)—

*Saigon—Remittance of profits—Government Bonds—Bonds bought by agent in British India and kept with Bank for safe custody—Value of bonds—If represents remittance of profits to British India or capital.*

The assessee, a resident of Tanjore District in British India had, among others, a partnership business at Saigon in Indo China. For the two years ending 31st March, 1936 his profits in Saigon amounted to Rs. 290,000. Of this he remitted Rs. 39,834 during the year to the Bank of Mysore in Mysore city to purchase Mysore Government Bonds of Rs. 60,000. The actual price paid for the bonds was Rs. 69,416, and the whole of this amount

## INCOME TAX ACT (1922), S. 4.

of the money remitted from Saigon. For two months the bonds remained in the custody of the Bank of Mysore, but in January 1937, the assessee caused them to be sent to the Madras branch of the Imperial Bank of India for safe custody. Later on he arranged with the Kumbakonam branch of the Imperial Bank of India for overdraft for the purpose of purchasing lands worth Rs. 33,000. The security consisted of the Mysore Government Bonds, the proceeds of which were

the purpose of being brought into British India and sold there, but were bought as a permanent investment, and the fact that the assessee had deposited them by way of security for an overdraft did not change their character. The investment of moneys remitted to Mysore by the assessee must under the circumstances be held to be a conversion of profits into capital and nothing more. (*Leach, C. J., King and Krishnaswami Ayyangar, J.J.*)

—S. 4 (2)—Foreign income—Company registered in British India—Interest on sterling securities payable and received in England and utilised for purchase of goods for purposes of business—Goods brought to British India—Liability of amount to tax

The assessee, a company registered in British India, was assessed to income-tax and super tax for the year 1936-1937, on a total income of Rs. 58,12,818. In this income, was included a sum of Rs. 1,29,025, representing interest on sterling securities on the ground that the same was constructively brought into British India within the meaning of S. 4 (2) of the Income-tax Act, the assessee having converted the same into goods purchased therewith in England and bought the said goods to British India for the purposes of its business. The assessee objected to the inclusion of the said amount in the income.

—S. 4 (2)—Foreign income—Remittance to British India—Trust funds deposited with firm by temple trustees in British India sent to foreign business of assessee—Subsequent remittance of funds to assessee's branches in British India and credited towards temple in books of the branch and not paid back to temple—If remittance of profits.

The assessee firm, having its headquarters at Kara-



## INCOME-TAX ACT (1922), S. 4.

firm on terms of interest, the firm having the right of utilising them for the purpose of its business. These moneys were transmitted to Penang and used in the business there. On 23-9-1933, the assessee remitted from Penang to Kangoon a sum of Rs. 20,000, which was credited to a temple in the Rangoon books. On 11-10-1935, a sum of Rs. 784 6 0 was remitted from Penang to Rangoon and similarly credited. On 21-9-1935 a sum of Rs. 4000 was also remitted from Penang to the Coleroon branch of the business which was in need of funds. Of this sum a sum of Rs. 13000, was credited in favour of one of the temples and Rs. 27,000 in favour of another temple in the accounts of the Coleroon Branch. Two further sums of Rs. 646-5 9 and Rs. 188 4 9, were remitted on 11-10-1935 from Penang to Coleroon, these sums representing the interest accrued on the amounts of the deposits made by these two temples. As a result of these transactions the temple accounts were eliminated from the Penang books.

## INCOME-TAX ACT (1922), S. 4.

by the assessee that the Rs. 11,570 was lightly treated as being net income. He, however, contended that that amount of Rs. 15,719 (equal to Rs. 10,000) should be treated as being a remittance of borrowed money, because throughout the year he was still overdrawn in spite of his payments into the account of the income from his properties.

*Held*, that the Court must look at the substance of the transaction and when that was done, the proper conclusion to be drawn was that there was here a remittance of profits. The test was from where did the money for the remittance come, and since it must be ultimately traceable to his income in Saigon, the remittance was, on the facts of the case properly assessed under S. 4 (2) of the Income tax Act, as a receipt of foreign income in British India.

*Krishnaswami Ayyangar, J.*—It would not be necessary that the assessee should receive the profits in the exact form in which they were made, but he must receive them

and the funds were not in fact utilised for any of the purposes of the trusts but for assessee's business.

*Held*, that the amounts remitted represent remittances of profit made at Penang and were not remitted. The most important factors to be taken into account were that there was no separate investment of the funds, but they had gone into the general funds of the trusts. The trusts were not paid back out of the remittances. (See *Leach, C. J. King and Krishnaswami Ayyangar, JJ.*)  
A. M. K. FIRM v. COMMISSIONER OF INCOME TAX,  
1939 I.T.R. 474

to cases of this kind. The question in each case is

—S. 4 (2)—What is taxed under the Act—Income received out of British India—Expenditure on articles subsequently sent to British India—If represents

of profits derived from his business. It was found that after this remittance to draw on the account for to make payments in from there and the payments from 7-12 financial year amounted to Rs. 11,570 with his overdraft standing at

## INCOME TAX ACT (1922) S 4

42 Bom L.R. 318=1940 P.W.N. 276=

42 P.L.R. 464 61 L.W. 61=

1940 A.W.R. (P.O.) 8-A.I.R. 1940 P.O. 36=

(1940) I.M.L.J. 137 (P.O.)

—S 4 (3) (i)—Scope—Charitable purpose—General public utility—Newspaper started with object of supplying province with organ of educated public opinion—Claim to exemption—Maintainability. See 1939 D.G. Col. 655 TRUSTEE OF TRIBUNE PRESS v COMMISSIONER OF INCOME TAX PUNJAB

66 I.A. 211=I.L.R. (1939) Lah. 475=

I.L.R. (1939, Kar. (P.O.) 37 (P.O.)

—(as amended in

dictation to assess—Transfer

another—Legality—Applic

S 45 Specific Relief Act—

—Government of India Act, 1920

The petitioner was carrying on business in Bombay in C Ward, S II. On 1-4-1939, the Central Government appointed under the of 1939, a Commissioner S 5 of the Act without Commissioner of Income 6 divisions, Sections II

Bombay and directed that each of the officers appointed to Sections 1 to VI (Central) should perform their functions only in respect of the area consisting of the

to income tax. In respect of 1931/1938, he was served with a notice under S 34 of the Income tax Act alleging that certain income had escaped assessment. The assessee's contention was that he was assigned to the Commissioner of Income tax (Central) by the Central Board of Revenue. The Commissioner directed the Income tax Officer Section II (Central) to deal with the assessment of the petitioner in respect of the years, 1937-1938 1938 1939 and 1939 1940. The notice served on the petitioner was by the Income tax Officer of C Ward Section II. The petitioner thereupon applied to the High Court under S 45 of the Specific Relief Act praying for an order directing the Commissioner of Income tax (Central) and the Income tax Officer (Central) Section II, to forbear from exercising jurisdic

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the place where the assessee carried on business or realised (Banumati, C. J. and Kanai, J.) DAYAL DAS

## INCOME TAX ACT (1922), S 6

KUSH RAM v COMMISSIONER OF INCOME TAX

(CENTRAL) I.L.R. (1940) Bom. 650=

189 I.O. 844=13 E.B. 81=3 Fed. L.J. (H.C.) 75=

1940 I.T.R. 139=42 Bom L.R. 414=

A.I.R. 1940 Bom. 234

—S 6—Income—Mining lease—Lessee given all rights of entering upon his land sinking shafts erecting colliery and taking away coal—Lessee covenanting to pay premium and minimum of royalty annually irrespective of what coal was produced—Royalty—If income assessable

By various mining leases the assessee transferred to upon his land, and such like In return for the lease by annual sums for

those rights depending upon the amount of coal removed and the amount of coke manufactured and with a minimum of royalty which was always payable irrespec-

1934 I.J. Held, that the mineral leases must be regarded as leases and not as sales of coal. The annual payments

KUMAR KAMAKSHA NARAIN SINGH

1940 I.T.R. 563=21 Pat L.T. 897=

A.I.R. 1940 Pat. 633 (S.B.)

—S 6—Royalty on mines—If income from property,

Royalty on mines cannot fall within the heading 'income from property' in S 6 because such income is defined in S 9 (Harris, C.J. East Asiatic and Minohar Lal, J.J.) COMMISSIONER OF INCOME TAX, BIHAR AND ORISSA v KUNWAR KAMAKSHA NARAIN SINGH

1940 I.T.R. 563=21 Pat L.T. 897=

A.I.R. 1940 Pat. 633 (S.B.)

—S 6—Sale—Vendor securing income for himself—Such income if assessable

A sale may be made for a price which could properly be regarded as a capital receipt and therefore not assessable to income tax. Such a transaction would

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of them, would not, if a profit had been from being in law, considered income, if of

## INCOME-TAX ACT (1922) S 7.

of the assessee from other source  
of S 6 (vi) of the Income tax Act

aintenance, manage  
or in respect of  
betting against his income profits or gains in the year  
under any other head of assessment (per  
*Iqbal Ahmad, J.*, dissenting) (*Iqbal Ahmad*  
and *Braund JJ.*) **INDRA SEN RAIZADA**  
**ITR (1940) All 274 = 187 IC 554 = 12 I**

1940 ITR 187 = 1940 A LJ 129 =

1940 A WR (HC) 131 =

**AIR 1940 All 151 (FB)**

**S 7—Company—Provident Fund—Contributions by employee and company—Payment to employee on retirement of total amount in Fund—if deferred salary or capital bonus—Liability to tax**

The assessee was an employee of an Insurance Company which had instituted a Provident Fund for its

each subscriber was entitled on retiring from service the

sums of Rs 5 296 and Rs 8 013, the former on account of the company's contributions to the Fund, and the latter on account of interest on the total contributions including the assessee's contributions

*Held* that the payment which the assessee received

1940 ITR 85

**(Burma) S 8 as amended by Burma Adaptation of Laws Order (1937)—Object and scope of S 8 is intended to point to the law by which any**

**Dunkley and Mackney JJ** COMMISSIONER OF

## INCOME-TAX ACT (1922), S 10

INDIAN RELIEF AND  
188 IC 202 =  
12 E S 275

Loss in the bigger partnership—If can be set off against  
gains of the assessee firm *See* 1939 Dig, Col 658  
**CHANDRIKA PRASAD RAM SWARUP v. COMMIS**

tax.

Sale of its shares and investments by a bank in order to meet withdrawals by depositors is a normal step in carrying on the banking business. It is an act done in "what is truly the carrying on" of the banking business and consequently the profits arising from such sales are assessable to income tax as profits of the banking business. In such a case in order to prove that profits made on sale of investments by the bank are taxable it is not

in a separate

investments

OPERATIVE

INCOME-TAX,

ITR 635 =

**AIR 1940 PC 230 (PC)**

**10 (2) (iii)—Partnership—Money ad by partners by way of loans—Interest on deductible**

is nothing in law to prevent a partnership business without capital, and there is nothing to prevent a partner or partners in case lending to the partnership money

which would bear interest deductible under S 10 (2) (iii) of the Income-tax Act. Where the instrument of partnership contains a provision to the effect that the net profits of the business after deducting all working expenses and interest paid or payable on capital whether

to the partners or depositors or others on moneys might have been borrowed divided between the two partners in the

of 8 3 and it is found that the partners have advanced amounts to the firm by way of loans the amounts paid as interest to the partners cannot be treated as profits of the firm and liable to assessment, but must be

allowed as deductions under S 10 (2) (iii) of the Income-tax Act. The fact that there is no evidence the loans on which a suit

is immaterial, as it is not material that there should be an instrument to

van (*Leach, CJ*, *Mockett* and *Krishnaswami Ayyangar, JJ*) **ABDUL RAHMAN**

**INCOME-TAX ACT (1922), S 10.**

to an allowance for depreciation in respect of the buildings and furniture under S. 10 (2) (i) of the Income-tax Act.

*Krishnamurti Ayyangar, J.*—(1) The Income-tax Act, being a taxing statute, should receive a strict construction, that is, a construction in favour of the assessee and not in favour of the Crown. If governed by either of two provisions, the right of the assessee to claim that under the one which leaves him (2) that the business contemplates the business carried on by the person or persons other than the respect of a building belonging to the assessee and used for his business that he can claim a depreciation allowance, (3) that the term "business" in S 10 denotes an abstract and intangible thing, quite apart from any of the physical adjuncts machinery or furniture used apart also from such other will, the business connection and so on (*Leach C J Ayyangar, JJ*) COMM

**—S 10 (2) (vi)—Or**

*Contract of purchase—Power to go behind and ascertain true value*

The original cost of any particular asset, is entirely a question of fact, and like any other question of fact

**INCOME-TAX ACT (1922), S 10.**

where tax has been or will be paid on the profits distributed. But where no income-tax is payable by the company there is no burden to adjust, and the company is not therefore entitled to make any deduction in respect of income-tax from the dividends paid. Where

The contract requires the company to pay a full dividend of seven and half per cent in every year when profits permit, but in any year in which the company is liable to income tax, it can deduct tax at the standard

**—S 10 (2) (vi) proviso (b)—Construction—Past depreciation—Right to set off—Nature and conditions of.**

52 L.W. 78—1910 M.W.N. 852—1910 L.T.B. 301—A.I.R. 1940 Mad. 602—(1940) 2 M.L.J. 95 (F.B.)

—Ss 10 (2) (vi), 14, 19 and 20—Scope and effect of—Company—Preference shares—Dividends payable at seven and half per cent, subject to tax—No tax payable by company—Right to deduct tax at standard rate from dividend payable.

The Income tax Act is concerned with securing revenue to Government, and there can be nothing in it which would justify a company in retaining for itself income tax in respect of its shares with no obligation to

off as bad debts

The assessee was a creditor of a firm which carried on a very large business and which became insolvent in 1929. There were several heavy claims for preferential treatment by secured creditors and these were ultimately decided in 1934. Another claim to priority was decided by the High Court in 1935 and finally decided in appeal in 1936. In 1936, the assessee wrote to the Official Assignee who was in charge of the estate of the insolvent firm for information as to whether there was any prospect of any dividend being declared and on being

## INCOME TAX ACT (1922), S. 10

(*Leach, C.J., Mockett and Krishnaswami Aiyangar, JJ.*) ALAGANANDA MUDALIAR v COMMISSIONER OF INCOME TAX, MADRAS 1940 I.T.R. 69

—S 10 (2) (ix)—Capital or revenue expenditure—Assessee getting right to collect conch shells from conch beds in zamindari for sums payable in instalments—Assessee carrying on business of chanks and chank beads—Amounts paid for grant of right to collect conch shells—If deductible for computing taxable income

The assessee, carrying on business in chanks and chank beads, acquired from certain zamindars the exclusive right to collect conch shells from certain conch beds belonging to those zamindars, for a period of years the consideration fixed for the grant of the right being payable in instalments. The assessee claimed that the moneys paid by him in instalments were nature of expenses which he was entitled to deduct under S 10 (2) (ix) of the tax Act, for the purpose of arriving at assessable income.

*Held*, that the sums paid by the assessee for the right to collect conch shells (including the material for his business itself), were expenditure of a capital nature and were not therefore deductible. (*Leach C.J., Mockett and Krishnaswami Aiyangar, JJ.*) ABDU HUSSAIN v COMMISSIONER OF INCOME TAX, MADRAS 1939 I.T.R. 652

—S 10 (2) (ix)—Construction—Money lending business—Suit against money lender for damages for

reckoning business and then a suit of Rs. 10,000 to a company in which he was a shareholder. In 1926, certain shareholders of the Company brought a suit

suffered heavy losses. The assessee's father denied the alleged agreement and his liability. He died pending

business operations

*Held*, (i) that it was the relationship of money lender and borrower which provided a foundation on which the allegations against the assessee's father were based

## INCOME-TAX ACT (1922), S. 13.

—S 10 (2) (ix)—Deposit by money-lending firm to become organising agents of an oil importing company—Insolvency of latter firm—Amount due to money-lending firm—If could be deducted from their profits

The assessee was a Hindu family doing until December, 1930, business in the Central Provinces which

the assessee was gradually to recoup to themselves from the deposits of selling agents who were to be appointed by them. Some time after the deposit was made the Bombay firm became insolvent and a sum of Rs. 39,500 was outstanding and due to the assessee and

Cl (ix) of S 10 (2) of the Income tax Act must be

an enduring benefit of a capital nature and the deposit could not upon a true view of the terms of the agreement and the circumstances of the case be regarded as in the course of carrying on another business. (*Sir George*) COMMISSIONER OF INCOME TAX v. 67 IA 71

ILLR (1940) Kar (P.C.) 102=186 IC 51=12 R.P.C. 132=51 ILW 429=1940 A.W.R. (P.C.) 21=1940 O.L.R. 110=128=44 C.W.N. 373=1940 P.W.N. 226=6 B.R. 348=42 Bom L.R. 323=71 C.L.J. 161=1940 I.T.R. 132=21 Pat L.T. 331=1940 M.W.N. 362=1940 A.L.J. 631=1940 O.A. 84=1940 O.W.N. 40=AIR 1940 P.C. 33=(1940) 1 M.L.J. 180 (P.C.)

—Accounts suspicious and unreliable of vouchers for purchases, suspicious

in cigars and beeries in venture, income of Rs. 14,988 for the year of assessment 1936-1937. On examining the accounts, the Income tax Officer found that they were entirely unreliable and could not be made the basis for any method of accounting and he

rejected the accounts or such rejection, (a) most of the purchases, in the Vetturuppu or (c) suppression of part the retail shop at Vellore. Officer then proceeded to 26,500 which was based profits made by other

## INCOME-TAX ACT (1922), S 13.

manufacturers of cigars and beedies and also on the profits which the assessee had made in previous years

Held, that there were ample materials to fix the order made by the Income tax Officer

to the estate  
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1939 I T R

—Ss 13 and 34—Applicability—Mortgage—Interest assessed annually on accrual basis—Realization

## INCOME TAX ACT (1922), S 22.

ment as maintenance—Amount received—If received as a member of Hindu undivided family

The assessee was the widow of one H. N., who with

10.10.1945 she suffered her estate in favour of B. B., in consideration of a payment by him by way of maintenance of Rs. 1000 a month

—Ss 13 and 23 (3)—Relative scope and interdependence of

Income tax Act (Leroyshire, L. J. and Nazim Ali, J.)  
KANALA BALA DAS, In re 1940 I T R. 404

—S 14 (1)—Exemption under—Hindu mother receiving maintenance—Will making provision for it

the two sections work together  
does not have reference to the m

in a will for the payment of this maintenance not affect the question (Zia ul Hasan

J.) COMMISSIONER OF INCOME TAX,  
v. RUDH KUMARI

190 I C 435—13 R O 150—  
1940 O L E 605—1940 I T R 607—  
1940 O W N 853—1940 O A 869—  
1940 A W R (O C) 398

—S 14 (2) (b)—Exemption under—Claim for—Facts to be shown

In order to bring into play S 14 (2) (b) of the Income-tax Act it must be shown by the assessee that any income in his hands has already been assessed to

lending firm—Assessment on the basis of average interest percentage on whole capital—If arbitrary or unfair See 1939 Dig Col 662 COMMISSIONER OF INCOME TAX C P AND U P v. BADRI DAS

188 I C 69—12 B N 316—A I R 1940 Nag 88

—Ss 14 and 16—Income—Computation of—Money received by assessee under father's will out of income of estate—If to be included in income

The assessee's father made a will, which provided *inter alia*, that the executors shall spend for the maintenance and education of the assessee a sum of Rs 500 a month and such further household expenses as may be necessary. The will further provided in another

—S 22 (2)—Notice to assessee, an undivided Hindu family—Capacities other than the relevant one not—Assessee not misled—Validity of notice

GORDHANDAS G. MENIA, In re

—S 14 (1)—Applicability—Hindu undivided family consisting of two brothers—Death of one—Widow of latter relinquishing life estate in favour of surviving coparcener in consideration of receiving monthly pay

Barua, J.) GOPAL DAS PARHOTTAM DAS  
COMMISSIONER OF INCOME TAX

1940 A L J 243—1940 A W R (H C)  
A I R 1940

INCOME-TAX ACT (1922), S 22

—S 22 (3)—Scope and applicability See 1939 Dig Col 662 COMMISSIONER OF INCOME TAX C P AND U P v RADRIDAS 188 IC 69 = 12 B N 316 = A I R 1940 Nag 88

—S 23 (2)—Notice under—Necessity—Assessee

—S 23 (3)—Construction and scope—Assessment

Income tax Act, there is nothing in the Act which requires the Income tax Officer to disclose to the assessee the material on which he

may form a just opinion

method has to be given a broad and reasonable construction (Dunne IC and Weston IC) COMMISSIONER OF INCOME TAX v RAMDAS

—S 23 (3)—Issue of notice contemplated by—When assessment can be made under S 23 (4)

E by if th und the Act

INCOME-TAX ACT (1922), S 21

faith, under S 23 (4) of the Act and where the Assistant Commissioner, upon consideration of the facts, has found that the assessment was properly so made the proviso to S 30 bars an appeal, and the order of the Assistant Commissioner rejecting the appeal is not an "has not disposed of" no question of law under sub S (2) or sub-Bappa, J J) SHEO INCOME TAX U P A I R 1940 All 530 (4)—Assessment under—Ss 66 (2) and by See INCOME TAX ACT Ss 66 (2) (3) 1940 O W N 514

—S 21—Assessee having business in Bombay and —Assessment in 1937-1938—Loss in Rangoon —Claim to set off—Langoon ceasing to be part of India after 31st March, 1937—If deprives of right to set off—Facts to be taken into account as in previous year—Construction of Act

—Ss 21 and 26 (2)—Applicability and construction—Right to set off—Right to another business—

—S 24 of the Income tax Act which enables an assessee

## INCOME-TAX ACT (1922), S 24

188 I C 706=13 R B 19=42 Bom LR 120=

1940 I T R 7=A I R 1940 Bom 169

—S 24—Set-off in respect of losses in running racing stable—If can be claimed. See INCOME-TAX ACT, SS 6 (VI) AND 24

1940 A W E (H C) 101 (P D)

—S 24 (1)—Firm of partners doing shares—Stock of shares always valued at valuation of firm at end of accounting allotted to partners at market value prevail of dissolution—Difference if can be claimed as loss. See 1939 Dig, Col 663 CHOUTHVAL GOLAPCHAND, IN 187 I C 722=12 R G 607

—S 26 (2)—Construction and scope—Succession—Assessment to income—Assessee—Who is. See INCOME TAX ACT, SS 24 AND 26 (2) 1940 I T R 7

—S 26 (2)—Facts giving rise to consequential question whether there is 'succession' within meaning of S 26 (2)—If a question of law

The proper legal effect of a proved fact is essentially a question of law. Whenever the facts give rise to a consequential question whether there is or is not a 'succession' within the meaning of S 26 (2) a question of law is involved. (Roberts C J, Durrley and Muckney JJ) COMMISSIONER OF INCOME TAX, A L V R I FIRM

A I R 1

—S 26 (2)—'Succession' of agency business in motor another—Transferee—Assessee justified—Principles. See COMMISSIONER OF INCOME TAX, CO., LTD I L R (1)

—S 26 (2)—When can a person be said to have 'succeeded' under

In order that a person should be held to have 'succeeded' within the meaning of S 26 (2) it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole. A Hindu son, A L A, money-lender and Mysik Devakottai in the Madras Presidency by and including the year 1936-37 the income of the family was assessed to income tax as a Hindu undivided family in Madras. Following upon the separation of Burma from India the income of the family in Burma that is from

## INCOME TAX ACT (1922) S 27

not warrant the inference that a separate business was carried on at each place inasmuch as the amount or capital at each place was not fixed but varied from time to time and the credit and debit of interest were merely book transactions. The arrangements having

1940 I T R 531=A I R 1940 Rang 281 (S B)

—S 26 A and Rr 2 and 6—Scope—Compliance—Application for registration of firm—Validity—Conditions—Partnership for fixed term—No provision for renewal—Absence of fresh instrument—Application for registration signed by clerk and unaccompanied by certificate of partner to show that constitution of firm was unaltered—Validity

The assessee was a firm of merchants carrying on business in Bezwada. The partnership was registered under the Income tax Act and was entered into for a period of five years from 23-8-1932 under a deed of partnership which did not provide for a renewal. No

altered. The Income tax Officer refused to register the firm and assessed the assessee as an

Held (1) that the partnership not having been renewed by a written instrument there was no instrument of partnership within the meaning of R 2 of the Income tax Rules (2) that the application signed not by one of the partners, but by a clerk, was invalid, (3) that it was also incomplete as it was not accompanied by a certificate signed by one of the partners, and (4)

it was justified in refusing to register the firm. (Lach C J, Mookit and JJ) COMMISSIONER OF INCOME TAX, KRISHNAMUTHY

1940 I T R 121

—S 26 A—Application under—Genuineness of partnership—If can be gone into—Finding—Interference by High Court

consequently claimed the benefit of the provisions of S 25 (3) Income tax Act but the Income-tax Officer held against them that they had 'succeeded' to the Pangoon business within the meaning of S 26 (2)

Held that there was no succession, within the meaning of S 26 (2), of the contractual co-partnership of the brothers, Pillaperumal Chettyar and Veerappa Chettyar, to the Pangoon shop of the deceased family

(Ghalla J) HAFIZ ABDUL COMMISSIONER OF INCOME TAX C P I L R (1940 Nag 200=187 I C 610=12 R N 294=1940 N L J 27=A I R 1940 Nag 119

—Ss 27 and 66 (2) and (3)—Existence of partnership—Meaning of S 27—Reference under S 66 (2) or (3) if competent

The question whether an assessee had or had not succeeded to a business within the meaning of S 27 of the Act is a question of fact and not of law. (Ghalla J) COMMISSIONER OF INCOME TAX, C P I L R (1940 Nag 200=187 I C 610=12 R N 294=1940 N L J 27=A I R 1940 Nag 119

A I R 191



## INCOME-TAX ACT (1922), S 22

—S 22 (3)—Scope and applicability See 1939  
Dig Col 662 COMMISSIC  
P AND U P v BADRIDAS

12 B N 3

—S 23 (2)—Notice

informing Income tax Officer

Where a notice under S 23 (2) was issued to the  
assessee when the original return was filed a fresh notice  
under S 23 (2) is not essential after the assessee had

—S 23 (3)—Construction and scope—Assessment  
under—Duty of Income tax Officer to disclose informa-  
tion and material forming basis of assessment—Income  
tax Officer—If "Court"

may form a just opinion on the fairness of the assess-  
ment. The assessee is bound to disclose to

"method" has to be given a broad and reasonable con-  
struction (Davis J C and Weston J) COMMIS

exists  
Where an assessment has been made, not in form  
only but in fact not ostensibly but actually and in good

## INCOME TAX ACT (1922), S 24

faith, under S 23 (4) of the Act, and where the As-  
n of the facts, has  
erly so made the  
f the order of the  
e appeal is not an  
not 'disposed of'

the appeal Hence there can be no question of law  
referable to the High Court under sub S. (2) or sub-  
S (3) of S 66 (Collister and Baisai, J J) SHRO

COMMISSIONER OF INCOME TAX U P

A I R 1940 All 530

—Assessment under—Ss 66 (2) and

See INCOME TAX ACT 'S 66 (2) (3)

1940 O W N 514

—S 24—Assessee having business in Bombay and

Rangoon—Assessment in 1937-1938—Loss in Rangoon

business—Claim to set off—Rangoon ceasing to be part

of British India after 31st March, 1937—If deprives

Rangoon was not part of British India for the pur-  
pose of assessment for that year and therefore only the in-

—Ss 24 and 26 (2)—Applicability and construc-  
tion—Business resulting in loss—Succession to—Right

apply to him as regards the business which is assessed  
(Beaumont, C J and Kania J) DAVID SASSOON &  
CO, LTD, In re I L R (1910) Bom 287 =

## INCOME TAX ACT (1922) S 24

188 I C 706 = 13 R B 19 = 42 Bom L R 120 =

1940 I T R 7 = A I R 1940 Bom 169

—S 24—Set-off in respect of losses in running racing stable—If can be claimed. See INCOME-TAX ACT, SS 6 (VI) AND 24

1940 A W R (H C) 101 (P R)

—S 24 (1)—Firm of partners doing shares—Stock of shares always valued at liquidation of firm at end of accounting allotted to partners at market value prevailing at dissolution—Difference if can be claimed as loss. See 1939 Dig, Col 663 CHOUTHMAL GOLAPCHAND, IN RE

187 I C 722 = 12 R C 607

—S 26 (2)—Construction and scope—Succession—Assessment to income—Assessee—Who is. See INCOME TAX ACT, SS 24 AND 26 (2) 1940 I T R 7

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A L V R I FIRM

A I R 19

1940 I T R 531 =

—S 26 (2)—'Succession'—of agency business in motor car another—Transferee—Assessee justified—Principles. See 1939 Dig, S 26 (2) 1940 I T R 531 = A I R 1940 K A L O 101 (P R) 12 R B 260

—S 26 (2)—When can a person be said to have 'succeeded under'

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monies—ten and Mysik Devakotta

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## INCOME TAX ACT (1922) S 27

not warrant the inference that a separate business was carried on at each place inasmuch as the amount of capital at each place was not fixed but varied from time to time and the credit and debit of interest were merely book transactions The arrangements having

1940 I T R 531 = A I R 1940 Rang 281 (S B)

—S 26 A and Rr 2 and 6—Scope—Compliance—Application for registration of firm—Validity—Conditions—Partnership for fixed term—No provision for renewal—Absence of fresh instrument—Application for registration signed by clerk and unaccompanied by certificate of partner to show that constitution of firm was unaltered—Validity

The assessee was a firm of merchants carrying on business in Bezwada The partnership was registered under the Income tax Act and was entered into for a

period on 22-8-1937 On 5-11-1937, the assessee

unregistered firm

Held (1) that the partnership not having been renewed by a written instrument there was no intrusion into the meaning of R 2 of the application signed not by a clerk, was invalid; (3) was not accompanied by a certificate signed by one of the partners; and (4) was justified in refusing (Leach C J, Mockett and J J) COMMISSIONER OF KRISHNAMUTHY

1940 I T R 121

—S 26 A—Application under—Genuineness of partnership—If can be gone into—Finding—Interference by High Court

(Grille J) HAFIZ ABDUL COMMISSIONER OF INCOME TAX C P I L B (1940 Nag 200 = 187 I C 610 = 12 R N 274 = 1940 N L J 27 = A I R 1940 Nag 119

—Ss 27 and 66 (2) and (3)—Existence of partnership—If can be gone into—Finding—Interference by High Court

The assessee had not succeeded to the business of the Act is and no reference was made to S 66 (2) or (3) (Col O UTTFAL & Co.)

A I R 1940

## INCOME-TAX ACT (1922) S 30

—S 30—Assessment under S 23 (4) wrongly treated as under S 23 (3)—Appeal—Test to determine

the section under which an a wrongly said to have been made appeal lies. The assessee did n the Income tax Act inasmuch a his income at all. He gave amount of his business in bills f Demands for books of account grounds, and finally the Income tax Officer was compell ed to assess the income on a percentage basis of the amount of the bills given return of income. The treated this assessment a Income tax Act

## INCOME-TAX ACT (1922), S 34.

—S 33—'Prejudicial'—Meaning of—If has the same meaning as in S 66 (2)

—S 34—Construction—'Escaped assessment'—

## BAY v. BASSANTRAM CHHATMAL.

I L R (1940) B

—S 30 (1)—Right of appeal—De before Income tax Officer if a pre-requi Dig., Col 666 ANAND KUNWAR v

OF INCOME TAX 1b Luck 131= 1940 I T R 126=A I R 1940 Oudh 52

—(as amended in 1933) S 30 (1)—Scope—Order refusing to register firm made prior to amendment

—Appeal—Competency No appeal would lie against an order refusing to register a firm made prior to the Income-tax Act by Act XVIII of a right of appeal subsequent or (Dutt, J C and Weston J) INCOME TAX BOMBAY v GANGA & CO 1940 I T R 421=A

—S 31—Applicability—Rejection of appeal by Assistant Commissioner, after finding that assessment under S 23 (4) was proper See INCOME TAX ACT,

1922 (4) that the the words if for were wide enough in the case and a fresh assessment could therefore be made under S 34 (3) that the payments in question were made out of the income which the executors received from the estate and could therefore be assessed to tax in the hands of the executors

Nasim Ali, J.—The word "assessment" in S 34 is ment, but cannot be nvalent to and Nasim In re Cal 520

—S 34—Construction—Procedure under—Preliminary inquiry before issue of notice to assess—If

burden of lies on the information income has

ad assessment has not thereby justified in re



## INCOME-TAX ACT (1922), S 30

—S 30—Assessment under S 23 (4) wrongly treated as under S 23 (3)—Appeal—Test to determine

grounds, and finally the Income tax Officer was compelled to assess the income on a percentage basis of the amount of the bills given by the assessee in lieu of a return of income. The Income-tax Officer by mistake treated this assessment as one under S 23 (3) of the Income tax Act.

*Held*, that the assessment clearly fell under and therefore there was no right of appeal *J C and Weston, J* COMMISSIONER OF INCOME TAX, BOMBAY v GANGARAM KANHAYALAL & CO. 1940 ITR 421—AIR 1940 S

—S 30 (1)—Order refusing registration S 26 A—Appeal prior to amendment of 1933

An order refusing to register a firm made prior to the amendment of 1933 is not appealable under S 26 A not being made in a proceeding which is an essential part of another proceeding in respect of which appeal was specifically provided by S 30 (1) was not appealable on that ground also. (*Davis, J C and Weston, J*) COMMISSIONER OF INCOME TAX BOMBAY v BASSANTRAM CHHATMAL. 1940 ITR 421—AIR 1940 S

—S 30 (1)—Right of appeal before Income tax Officer—Appeal—Competency

No appeal would lie against an order refusing to register a firm made prior to the amendment of 1933. (*Davis, J C and Weston, J*) COMMISSIONER OF INCOME TAX BOMBAY v GANGARAM KANHAYALAL & CO. 1940 ITR 421—AIR 1940 S

—S 31—Applicability—Rejection of appeal by Assistant Commissioner, after finding that assessment under S 23 (4) was proper. See INCOME TAX ACT, Ss 23 (4) 30, 31 AND 66 (2) AND (3). AIR 1940 ALL 530

—S 33—Powers of revision—If can be exercised again a second time in respect of same order on different grounds.

In respect of the same order in respect of other points which do not affect the previous one? (*Dalip Singh and Sale, JJ*) NANHE MAL JANKI NATH v COMMISSIONER OF INCOME TAX. 1940 ITR 457

## INCOME-TAX ACT (1922), S 34

—S 33—'Prejudicial'—Meaning of—If has the same meaning as in S 66 (2)

—S 34—Construction—'Escaped assessment'—Meaning of—Income not assessed to tax owing to mistake—Subsequent proceedings under S 34—If justified—Assessment—Meaning of

A testator by his will directed his executors to make

and assessed that sum to income tax on the ground that it had escaped assessment in that year.

*Held* that it was impossible to say having regard to the plain words of the statute that the income of Rs 39,492 did not escape assessment in the year in question that amount was not assessed in 1933 by the Income tax Officer as he was under a mistake which he

1935, (2) that the words if for were wide enough in the case and made under S 34 were made out of

the income which the executors received from the estate and could therefore be assessed to tax in the hands of the executors.

*Nazim Ali J*—The word "assessment" in S 34 is meant, but cannot be equivalent to and *Nazim Ali J* Cal 520

—S 34—Construction—Procedure under—Preliminary inquiry before issue of notice to assessee—If necessary

Under S 34 of the Income tax Act the burden of showing that income has escaped assessment lies on the Income-tax Officer. But if he receives information that income has escaped assessment he is justified in requiring a preliminary inquiry before he has a chance to be satisfied that the income has not escaped assessment.

started as a consequence of the notice being served. The section does not require a preliminary inquiry before the notice is served. (*Stone C J and Bose J*) HAJI ALI MAHOMED v COMMISSIONER OF INCOME TAX,

INCOME-TAX ACT (1922), S. 34.

CENTRAL PROVINCES AND UNITED PROVINCES.

1940 I.T.R. 243.

S. 34—*Interpretation of proceedings under—Prize*

qua

Inc

INCOME-TAX ACT (1922), S. 66.

1940 O.L.R. 597=1940 M.W.N. 1263=7 B.E. 105=

52 L.W. 585=A.L.R. 1940 P.C. 183=

(1940) P.C.T. 7 251 (D.C.)

1939 Dig., Col. 669

R. 1940 Mad. 308.

R. 25—"Actuarial

39 Dig., Col. 669

AN, BENGAL v

9) Kar. (P.C.) 313

-Central Board of

of. See 1939 Dig.,

OME TAX, BOMBAY

INDIAN RELIEF AND BENEFIT INSURANCE CO.,

189 I.C. 184=13 R.S. 24

S. 41—Applicability—"Manager appointed by Court". See 1939 Dig., Col. 668 KESHARDEO CHAMRIA v COMMISSIONER OF INCOME TAX, BENGAL.

I.L.R. (1939) Kar.

42 Bom L.R. 129=21

Ss 42 (1) and 43—Business connection to actual transactions in question—

"Agent"—Meaning of

A bank outside within British India same person Both t which transacted busi and other places A bank. The transactio were, however, negoti branches of the bank

show that the A bank had a business connection in British India in relation to actual transactions in question

INDIAN RELIEF AND BENEFIT INSURANCE CO., LTD.

S. 66—Reference to High Court under—Func

tion of the High Court.

1940 I.T.R. 467.

-Scope and object of—Local jurisdiction

See INCOME-TAX ACT, SS 5 AND 64

1940 I.T.R. 139=42 Bom L.R. 414.

S. 66—Reference to High Court under—Func

tion of the High Court.

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## INCOME-TAX ACT (1922), S. 66.

Regarding the application under S. 66(2) was forwarded to the pleader and received by the latter on 13-10-1939. On 1-11-1939 the pleader applied to the Commissioner to withdraw the application under S. 66(2) and asking for Rs. 100. A refund voucher and sent to the pleader who

under S. 66(2) It was found that the assessee knew about the reduction of the assessment and the withdrawal of the petition under S. 66(2) at the time her pleader agreed to withdraw the petition

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ITR 482

—Ss. 66 (2) and (3) and 23 (4)—Assessment under S. 23 (4)—S. 66 (2) and (3) if apply

Where assessment is made on the assessee under S. 23

## INCOME-TAX ACT (1922), S. 66.

TAX, BOMBAY v. INDIAN RELIEF AND BENEFIT INSURANCE CO., LTD. 189 IC 184=13 RS 24.

—S. 66 (2)—Question of law and question of fact—Whether assessee is carrying on business and whether he is rightly assessed at a particular figure—Finding of Commissioner—Interference by High Court.

The question whether an assessee is carrying on business of fact on which the High Court with the finding of the Income-tax Commissioner has the assessee is carrying on business, and there is evidence on which that finding can be justified, the High Court must accept it and will not consider whether it is right. But the question whether the assessee has been properly assessed at a particular figure is largely a question of law. Where the whole transaction constituting the carrying on of business is not yet complete, it cannot be said on the

the profits arises when the venture comes to an end. But where the transaction as a whole is not complete, it is not possible for the Court to say whether there is any profit and if so how much (Braumont, C. J. and Kamal, J.) K H MODY, *In re* 1940 I.T.R. 179

—S. 66 (2)—Costs of reference—If preliminary deposit.

Preliminary deposit by the assessee unc forms part of the costs incurred in

COMMISSIONER OF INCOME TAX, BOMBAY v. CENTRAL POPULAR ASSURANCE CO., LTD. 186 IC 790=12 RS 208

—S. 66 (2)—Question of fact to be decided on findings of Commissioner—Proof required of assessee

efore there is no order under S. 33 of that order 66 (2) (Dahip

Singh and Sale, JJ) NANHE MAL JANKI NATH v. COMMISSIONER OF INCOME TAX. 1940 I.T.R. 437.

—S. 66 (2)—Question of law—Inference from facts—Question whether on facts found society is a divi-

LTD v. COMMISS

—S. 66 (2) facts—Question whether on facts found society is a dividing society under R. 31 of the Rules under Act. See 1939 Dig., Col. 671 COMMISSIONER OF INCOME

Set off against Rs. 100 paid under S. 66 (2)—Right to—Proper order—Discretion of Court. See 1939 Dig., Col. 672 COMMISSIONER OF INCOME TAX, BOMBAY

— 15 —

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete them.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any lessons learned for future projects.

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1. The first step is to identify the problem or question that needs to be addressed. This involves understanding the context and the specific requirements of the task.

2. Next, it is essential to gather relevant information and data. This can be done through research, consultation with experts, or by analyzing existing resources.

3. Once the information is gathered, the next step is to analyze it. This involves identifying patterns, trends, and key factors that influence the outcome.

4. After analysis, a plan or strategy should be developed. This plan should outline the steps to be taken, the resources required, and the timeline for completion.

5. The final step is to implement the plan. This involves executing the tasks, monitoring progress, and making adjustments as needed.

6. Finally, the results should be evaluated. This involves comparing the actual outcomes with the expected results and identifying areas for improvement.

The following information was obtained from the above-mentioned sources:  
 1. The name of the person who was the first to use the term "computer."  
 2. The name of the person who was the first to use the term "programmer."  
 3. The name of the person who was the first to use the term "operator."  
 4. The name of the person who was the first to use the term "operator's manual."  
 5. The name of the person who was the first to use the term "operator's manual."  
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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

THE UNITED STATES OF AMERICA  
DO hereby certify that  
the within and foregoing is a true and correct  
copy of the original as the same appears  
on the records of the Department of the Interior  
at Washington, D. C.

\_\_\_\_\_

SUBJECT:

[illegible]



## INCOME-TAX ACT (1922), S 66

There was a further order in revision under S 33 of the Act by the Commissioner acting *suo motu*. The pleader agreed to a reduced figure and on 11-10-1939 an order rejecting the application under S 66(2) was forwarded to the pleader and received by the latter on 13-10-1939. On 1-11-1939 the pleader applied to the Commissioner under S 66(2) and asking Rs 100. A refund was sent to the pleader. The latter the pleader in withdrawing and sent back the refund voucher to the Commissioner, alleging that the pleader had no authority to compromise or withdraw the petition under S 66(2). It was found that the assessee knew about the reduction of the assessment and the withdrawal of the petition under S 66(2) at the time her pleader agreed to withdraw the petition.

*Held*, that the pleader was, under the vakalatnama, acting within his powers and was authorised to draw the application and that the assessee was by the withdrawal and could not claim to have stated (*Derbyshire, C J and Mukherjee, HASHEN BANU BIBI v COMMISSIONER OF INCOME TAX*).

(4)  
(2)  
Sr

payable by assessee—If limited or confined to amount deposited by him. See 1939 Dg Col 671. *COMMISSIONER OF INCOME TAX, BOMBAY v SINGH AND SONS*.

## INCOME-TAX ACT (1922), S 68

TAX BOMBAY : INDIAN RELIEF AND BENEFIT INSURANCE CO., LTD 189 IC 184=13 R S 24

—S 66 (2)—Question of law and question of fact—Whether assessee is carrying on business and whether he is rightly assessed at a particular figure—Finding of Commissioner—Interference by High Court.

The assessee was carrying on business, and there is evidence on which that finding can be justified, the High Court must accept it and will not consider whether it is right. But the question whether the assessee has been properly assessed at a particular figure is largely a question of law. Where the whole transaction constituting the carrying on of business is not yet complete, it cannot be said on the facts that the particular figure represents profits of the

the profits arises when the venture comes to an end.

66 (3)—Interference by High Court.

Commissioner of Income tax rejects an application under S 33 of the Income-tax Act, it is belated, no point of law arises on that question within the meaning of S 66 (2). It is a matter for the discretion of the Commissioner.

COMMISSIONER OF INCOME TAX, BOMBAY v SINGH AND SONS (1939) 13 R S 24.

must establish either that the Commissioner had misdirected himself on some question of law or that there was no sufficient evidence to justify his findings. (*count Maugham*) PUNJAB CO-OPERATIVE LTD : COMMISSIONER OF INCOME TAX, LAHORE.

52 LW 926=1940 ITR 600.  
AIR 1940 PC 230 (PC)

—S 66 (2)—Question of law—Inference from facts—Question whether on facts found society is a dividing society under R 31 of the Rules under Act. See 1939 Dg Col 671. *COMMISSIONER OF INCOME TAX, BOMBAY v SINGH AND SONS*.

INSURANCE CO. LTD 188 IC 202=12 R S 24/b

—Ss 66 (2) and 6—Scope—Fee—Co's—Reference—Unsuccessful assessee—Costs payable by—Set off against Rs 100 paid under S 66(2)—Right to—Proper order—Discretion of Court. See 1939 Dg Col 672. *COMMISSIONER OF INCOME TAX, BOMBAY v SINGH AND SONS*.

## INCOME TAX ACT (1922), S 66

**CENTRAL POPULAR ASSURANCE CO., LTD.**  
**I.L.R. (1910) Kar 130=185 I.C. 693=**  
**12 R S 172**

**RELIEF AND BENEFIT INSURANCE CO. LTD.**  
**183 I.C. 202.**

—S 66 (2)—Scope—Question of whether assessee is a dividing society under Income tax Rules. See 1939 Dig., Col 673. **CENTRAL TALUKES CIRCUIT & COMMISSIONER OF INCOME TAX BOMBAY.**

Where the Commissioner on an application under

—S 66 (3)—Costs—Application to direct Commissioner to state a case—Costs of—Rule as to See 1939 Dig., Col 673. **CENTRAL TALUKES CIRCUIT & COMMISSIONER OF INCOME TAX BOMBAY.**

—S 66 (3)—Question of law—Notice under S 22 (4)—Failure to comply with—Assessment under S 23 (4)—Application for reference on ground that assessment should be under S 23 (3)—Competency

Where there is a failure by the assessee who has got the

There is no question of law and the Commissioner cannot be called upon to state S 66 (3) of the Act. (*Stone & J and Ali Mahomed v. Commissioner of Central Provinces and United Provinces*)

—S 66 (2) and (3)—Question of law referable under, if exists—Rejection of appeal not amounting to an order under S 31. See INCOME TAX ACT, S 23 (4) 30 31 AND 66 (2) AND (3)

**A.I.R. 1940 All 530**

## IND &amp; COL DIV JURIS ACT (1926), S 1

—S 66 (3)—Question of law—*Salami or nazarana*  
 —If income as rent or capital—Determination—Consideration. See INCOME TAX ACT, Ss 24 AND 66 (3) 1940 P.W.N. 702  
 of—Reference under  
 for review—Competency  
 b—If Civil Court

The High Court when acting under the powers con

not create as a Civil Court as to attract the C.P.

12 R M 544.

## TRIAL PROVIDENT FUNDS SOCIETY LTD.

**188 I.C. 716=13 R S 3**

—R 31—Construction—'Dividing Society'—If covers dividing insurance society—Companies. See 1939 Dig. Col 676. **COMMISSIONER OF INCOME TAX BOMBAY & CENTRAL POPULAR INSURANCE CO., LTD.**

—R 31—Scope—If ultra vires. See 1939 Dig., Col 676. **COMMISSIONER OF INCOME TAX BOMBAY & INDIAN RELIEF AND BENEFIT INSURANCE CO., LTD.**

**189 I.C. 181=13 R S 24.**

—S 1—Jurisdiction under—Parties to marriage last residing in Lahore—Wife living in Bombay before and at time of petition for divorce—Husband living in Lahore—Petition by wife in Bombay High Court—*Nasir Ahmad v. R 24* under S 1 (4)—Construction

The Indian and Colonial Divorce Jurisdiction Act in British domicile

INJUNCTION

suit in the High Court of Bombay for dissolution of marriage under the Indian and Colonial Divorce Jurisdiction Act of 1926. The parties last resided together within the appellate jurisdiction of the Lahore High Court. The respondent still lived there but the petitioner lived in Bombay at the time of the suit and for some time before.

*Held*, that the Bombay High Court had jurisdiction to try the suit and was bound to do so. R 24 of the Rules made by the Secretary of State under S 1(4) of the Act must be construed as extending only to matters of procedure and not as affecting jurisdiction (*Blaumont, C J*) P C CARROLL v C J CARROLL 42 Bom LR 1083

INJUNCTION See also C P CODE, O 39

—Grant of—Grounds—Land owned by Mahomedans—Building of mosque and use as such—Objection to same by Hindus owning place of worship near by—Injunction restraining use of building as mosque—Legal ty of See 1939 Dig, Col 678 KHAJI DODDA KHAJI SAHIB v NANJAPPA 185 IC 554=

12 RM 553

—Quia timet—Right of action—Injunction to restrain act threatening injury to right—Ancient and famous temple—Proposal to build new temple in vicinity to attract pilgrims by deception—Suit for injunction—Mantai

If an imminent threat to rights is present and cannot be denied and damage is caused and it is a time to prevent a wrong when the defendant is right. When there is an imminent invasion of the plaintiff's right in the contemplation of the defendants it cannot be said that a suit for an injunction is premature or that the claim to an injunction is unwarranted. Though

had become very famous for the supposed benignant and propitious influence of the idol installed there and

his right to  
ere the idol  
ary pujas  
mple which

an injunction,

INSOLVENCY

—Right to—Non joinder of parties Suit to declare decree obtained by defendants 1 to 3 under S 105 B T Act, not binding—Prayer for injunction to restrain defendants 1 and 2 from enforcing certificate obtained by them in execution of that decree—Death of defendant 3 pending suit—His heirs not brought on record—Plaintiff's right to declaration and injunction

Plaintiff sued for a declaration that a decree obtained by the landlords defendants 1 to 3 in a proceeding under S 105 of the B T Act for enhancement of rent was not binding on her and for an injunction restraining defendants 1 and 2 from enforcing the certificate issued at their instance in execution of that decree. The plaintiff alleged that the tenore was purchased by her some two years before those proceedings and that she was fraudulently not made a party to them. Defendant No 3 died some time after the institution of the suit. The plaintiff did not bring his heirs on the record and the result was that the suit abated against them.

*Held*, (i) that although the decree in the S 105 case could not be set aside in the absence of defendant No 3 or his heirs, it was not necessary for the plaintiff to have the decree set aside as she was not a party to the proceeding, (ii) that the plaintiff could ask the Court to give her an injunction on the footing that the decree was not binding on her and that as the certificate was issued at the instance of defendants Nos 1 and 2 only,

189 IC 832=13 RC 117=71 CLJ 192=  
44 CWN 433=AIR 1940 Cal 514

—Right to—Opening door in one's house—Inter-

INSOLVENCY

See also (1) PRESIDENCY TOWNS INSOLVENCY ACT (2) PROVINCIAL INSOLVENCY ACT

—Adjudication—Conditions—Strict compliance with statute

An insolvent involves a liability to the party Act should be laid upon a ) DAMNU

O Pat 187

See 1938

SHEO RAO

NAG 526

—Application for—Absence of good faith

## INSOLVENCY.

The *Official Assignee* of the insolvent's property wherever it might be irrespective of the fact whether it is mentioned in the application or not. (*Abdul Qasim, C.J. and Wazir, J.*) *GANGA RAM v. JAGAT RAM*

185 IC

—*Fraudulent preference—Insolvent borrowing loan with permission of Official Assignee and authorising creditor to collect part of his salary from employer every month—Official Assignee permitting creditor to collect salary—Effect of—If voluntary payment—Right to recover back*

from the creditor the payments received by him on the ground that the payments amount to an undue preference of one creditor (*Somaya J.*) **OFFICIAL ASSIGN OPERA**

*over O;*  
—*Maintainability—Conditions—Irregularity or inadequacy of price—Sufficiency*

An ordinary Civil Court has no power or control over

—*Policy of insolvency law*

The whole policy of the insolvency law is to see that

price—Rights of parties See 1939 Dig. Col 680  
*KAUSHAL PAL SINGH v. JWALA BANK, AGRA.*

1940 RD 43.

**INSURANCE—Fire insurance—Onus of proof—Agreement between parties**

In fire insurance as a matter of agreement between parties the onus of proof of any particular fact or of its non-existence may be placed on either party in accordance with the agreement made between them. (1920) 1

## INSURANCE ACT (1938), S 107.

*Meaning.*

The phrase "civil commotion" as used in fire insurance policies means a stage between a riot and civil war. It has been defined to mean an insurrection of

A.I.R. 1940 PC 199 (PC)

—*Life insurance—Misrepresentation in proposal—Declaration as to truth of statements made—Contract to become void, if statement found to be untrue—Effect*

Where the declaration of the assured together with the proposal are made the basis of the contract between

1940 A W R (CC) 74=185 IC 793=  
1940 O L R 62=1940 O A 152=1940 O W N 149=  
A I R 1940 Oudh 212  
Are amendments made to

Death of assured—Amount of policy—Right to—If assets of deceased assured See 1939 Dig. Col 681

*LAASHMI KUTTY KETHILAMA v. VISHNU NAMBISAN*  
185 IC 175=12 R M 522.

J OF 1938) S 7 (3) and (7)—  
Act—Appropriation according

the Act is simply a general provision for securities already deposited for purpose of being used as deposit provision as to valuation being purely a question of machinery. Although there is no specific provision stating that deposits already made and

186 IC 428=12 R.A. 392=1940 Ins O 1.  
—S 107—Allegations amounting to offences under both Companies Act and Insurance Act—Prosecution under former Act—Propriety.

Where the allegations made against the manager of an Insurance Company amount to offences under both the Companies Act and the Insurance Act, it would be trifling with the law to prosecute him under the Companies Act instead of under the Insurance Act. T

## INSURANCE ACT (1938), S 107

prosecution under the Companies Act should be confined to matters which are offences only under that Act (*Henderson and Akram, JJ*) SURENDRA NATH SARKAR v KALIPADA DAS

I L R (1940) 1 Cal 575 = 188 I C 537 =  
13 R O 14 = 41 Cr L J 625 = 1940 Comp C 141 =  
44 C W N 454 - A I R 1940 Cal 232

—S 107—*Proviso*

S 41(2)—*Sancti*

S 107 of the Ir

The Advocate-General is not a proper person to be started against an insurer or any director manager or other officer of an insurer for any offence under the Act. The section is not confined to a prosecution under S 41(2) of the Act. The words 'who is liable under sub S (2) of S 41' in the section qualify the words 'any person', otherwise the words no proceedings under this Act would have no real meaning (*Henderson and Akram, JJ*) SURENDRA NATH SARKAR v KALIPADA DAS

I L R  
188 I C 537 = 13 R O  
1940 Comp C

—S 110—*Appeals under—procedure*

Appeals under S 110 of the Insurance Act may be made by petitions setting out the objections *serialiter* in a manner (*J*)

## INTI

See also (1) C P (ODL, S 34

(2) CONTRACT ACT Ss 73 AND 74

(3) INTEREST ACT

—When could not be decreed

No sum could be decreed as interest if it was neither within the contract nor was it interest by damages and nor was it specifically provided by statute (*Zia ul Hasan and Hamilton JJ*)

THEATRES LTD v NARAYAN DAS

15 Luck 550 = 187 I C 849 = 12 R C  
1940 O W N 395 = 1940 O A 300 =  
1940 O L R 264 = 1940 A W R (CC) 184 =  
A I R 1940 Oudh 257

INTEREST ACT (XXXII OF 1839) S 1—*Applicability—Monthly allowance of 'guzara' payable under a compromise*

A monthly maintenance or allowance of 'guzara' made payable under a compromise in a suit comes within the scope of S 1 of the Interest Act and hence it would be

1940 O L R 237 = 1940 O W N 425 =

A I R 1940 Oudh 305

—S 1—*Interest—Award of—Interest prior to suit*

A Court passing a decree for money lent in a case of an inadmissible promissory note cannot allow interest for a period prior to the suit under S 1 of the Interest Act when there was no demand of payment made at any time before the suit (*Kadha Arishun J*) BABU

## INTERPRETATION OF STATUTES.

LAL v DURGA PRASAD 188 I C 184 = 12 R O 421 =  
1940 O W N 581 = 1940 O A 512 =  
1940 O L R 328 = 1940 A W R (CC) 267 =  
A I R 1940 Oudh 308

—Proviso—Right to interest—Inam grant—  
Grantee given right to collect land revenue—Right to sue for same

RUSO F

INTERNATIONAL LAW—Jurisdiction of Courts—  
Absent foreigners

It is a well settled rule of international law that Courts cannot by their judgments bind absent foreigners who have not submitted to their jurisdiction, and can only exercise jurisdiction over persons who are within the territorial limits of the Court's jurisdiction and therefore a decree passed against an absent defendant where the defendant at the time the suit was instituted was neither a resident nor a citizen in the country in which the judgment was obtained.

A decree passed against an absent foreigner is valid only so far as the same is made operative by local legislation within the country of the forum. In the absence of such legislation, the decree is of no effect against the absent foreigner. (*Al-Homedi*)  
ARKANWAR  
187 I C 19

BAI

INTERPRETATION OF STATUTES—*Acti in*  
*pari materia*

Where there are different statutes *in pari materia*

## —Addition or subtraction of words—Justification

One of the elementary rules of construction of statutes is that nothing is to be added to or to be taken away from a statute unless there are adequate grounds to justify the inference that a legislature intended something which it omitted to express (*Collector and Bapari, JJ*) RAM CHANDRA: RAM LAL

1940 A W R (HC) 470 = 1940 A L J 744 =

A I R 1940 All 500

—Effect on See

(1934) AS AMEND

1940 R D 116

—Effect on See 1939

MUNICIPAL BOARD

R (1939) All 770

## —Clear language—Duty of Court

When the words of a statute are clear, it is not within the province of a Court, simply with a view to avoid apparent anomalies, to put such an interpretation on the

## —Clear language—Duty of Courts

It is not within the province of Courts of law to depart from the natural and ordinary meaning of the words used when those words are capable of one and only one interpretation (*Qadai Ahmad and Yermu*,

## INTERPRETATION OF STATUTES

*JJ*) RAMJATAN PANDEY & SOMESHWARI PRASAD  
1940 O A 1178=1910 A W R (H O) 593  
—Directory or mandatory—Test—Section worded  
imperatively—Act in disregard of—If void See 1939  
Dig, Col 687 MANICKAVASAKA THEVAR & CHIDAM  
BARAM PILLAI 189 IC 829=13 R M 336=  
1940 M W N 62=AIR 1910 Mad 185=  
(1940) 1 M L J 20  
—Duty of Court—Expounding of Act See 1939  
Dig, Col 687 SECRETARY OF STATE & ARUNA  
CHALAM MUDALIAR 189 IC 228=13 R M 210  
—Duty of Court—Main provision of law See  
1939 Dg Col 687 ALL INDIA RAILWAYMEN'S  
BENEFIT FUND, LTD & RAMCHAND 186 IC 244=  
12 E.N. 194  
—Duty of Court—Reference to cases on which  
Statute is based—Desirability  
It is desirable to construe statutory provisions accord-  
ing to their tenor, if possible without  
reported cases on which the statute  
thought to be based (*Panbridge J*)  
NATH & BONEBEHARY

—Duty of Court—Sections of same  
can be contradictory

In one and the same enactment one section is not ex-  
pected to be diametrically opposed to the other.  
However unhappily worded may a statute appear, it is  
the duty of the Courts applying the same to put the

## INTERPRETATION OF STATUTES

so as to lead to that result (*Gruber J*) PREMABAI  
v PRIYA KUMARI 1940 N L J 495=  
AIR 1940 Nag 400  
—Fiscal Acts—Statutory rules—Rules of construc-  
tion See 1939 Dg, Col 688 COMMISSIONER OF  
INCOME TAX BOMBAY & CENTRAL POPULAR ASSUR-  
ANCE CO LTD 186 IC 790=12 R S 208  
—Fiscal Act—Strict construction—Construction in  
favour of subject See 1939 Dig, Col 688 MEWA  
RAM & MUNICIPAL BOARD MUTTRA  
I L R (1939) All 770  
—General and specific provision—Exclusion of  
general by specific provision See 1939 Dig, Col 688  
SHRIDHAR MAHADEO & GODULAL JETHMAL  
I L R (1939) Bom 721=186 IC 509=  
12 R B 343=AIR 1940 Bom 20  
—General and special provision in conflict with

LIASANT & L. IREKOR JUL 10 52=  
1940 P W N 521=6 Cut LT 43=  
21 Pat LT 511=AIR 1940 Pat 577

—General principles

Per *Hamilton J*—There is no presumption that where

Explanations in an Act can explain but cannot expand  
the provisions of the Act (*Stone C J and Clark J*)  
RADHAKISAN JAISKISAN & MU  
KHANDWA

—Explanation to section

—Reference to—Context and scheme of the Act—Relevancy

I L R (1940) Bom 58=31 L J (H O) 25=  
186 IC 817=12 R B 379=42 Bom L R 10=  
1939 I T R 670=AIR 1940 Bom 65 (F B)

—Hardship—Relevancy

If the language of a statute is clear the Court  
is not concerned with the question of possible  
hardship that may result from enforcing that  
statute (*Ram Lal J*) DIAMOND TOBACCO CO  
v HARI RAM MITTAL 41 P L R

—Harmonious construction See 1938 Dg  
823 RAMPRASAD & ANANJ

I L R (1910)

Even if the phraseology gave rise to doubt the benefit  
of that doubt would have to be given to the subject  
rather than to the state in dealing with a fiscal Act.  
Even if any other position might seem to be more logical  
or reasonable the words of the statute cannot be twisted

## INTERPRETATION OF STATUTES

—Harmonious construction—Different statutes  
See 1939 D.G., Col 68 *Mewa Ram v. Municipal Board Muttra*  
I.L.R. (1939) All 770

—History of enactment—Reference to—Permissibility

The words of an enactment must be read in their

## INTERPRETATION OF STATUTES.

MAGHNI KHAN I.L.R. (1940) All 455=  
188 I.C. 586=13 R.A. 27=1940 R.D. 135=  
3 F.L.J. (H.C.) 83=1940 A.L.J. 271=  
1940 A.W.R. (H.C.) 208=  
A.I.R. 1940 All 272 (F.B.)

—Machinery provisions

... to the contrary | *valent potius quam ferat (Lord Norman)* COM

... *DRAYDARI BILLS*  
v. COMMISSIONER OF INCOME TAX  
I.L.R. 1939, All 832=12 R.A. 294

—Interpretative Act—If takes away existing rights

... All world others in  
many respects from the Indian Act (*Harris, C.J.*)  
*Fazl Ali and Manshar La*  
INCOME TAX BIHAR  
KAMAKSHA NARAIN SINGH  
1940 I.T.E. 563=A

—Interpretative Act—If takes away existing rights

If an act is merely interpretative introduced for the purpose of settling titles, existing rights, the legislature the law has always been deemed to have been  
RAMSARAN v. SETH BALKI  
I.L.R. (1940) Nag

—Jurisdiction of Civil

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with has not acted in conformity with principles of judicial procedure.

THE SECRETARY OF STATE

67 I.A. 222=1  
188 I.C. 231=1940 M  
71 C.L.J. 576=6 B.B.  
42 Bom L.R.  
13 R.I.  
1940 A.W.R. (C.C.)  
A.I.R. 1940 P.C. 105=(1)

—Jurisdiction of Civil

creating special powers and providing special remedy—  
Remedy of suit—Bar of See 1939 Dig., Col 690  
SUBBAYYA v. THIPPA REDDI 188 I.C. 200=

—Legality of a

when can be held to be u

In construing statutes borne in mind is that

of the legality of a statute. A statute should not be held to be unconstitutional or *ultra vires* unless it is clearly repugnant to the constitution. Courts should have a leaning towards holding an enactment *vires* rather than *ultra vires* (*Iqbal Ahmad, B. and Mohammad Ismail, J.J.*) *ATIQA BEGAM v. AI*

189 I.C. 154=1940 O.W.N. 531=1940 O.A. 577=  
1940 I.T.E. 442=52 L.W. 231=44 C.W.N. 929=  
A.I.R. 1940 P.C. 124=(1940) 2 M.L.J. 577 (P.C.)

—Mandatory enactments—If directory or obligatory

The question whether mandatory enactments ought to be construed to be directory only or obligatory depends of the statute to be upon which a Court's decision is directory or obligatory of the Legislature of the word "shall" does not necessarily imply that a particular provision is imperative. The distinction between statutes creating

—Marginal notes—Reference to

186 I.C. 445=14 R.B. 335

—Meaning of words clear—Intention—Relevancy  
When the meaning of the words is plain, it is not the

See also *FATEH MAHOMED v. EMPEROR*  
A.I.R. 1940 Sind 97

## INTERPRETATION OF STATUTES

MANUFACTURING & CALICO PRINTING CO. LTD.  
 I L R (1939) Bom 701=186 I C 456=12 R B 311  
 ————*Meaning of words—Words not to be added or ignored*

It is a fundamental principle of that ordinarily words should not be statute. It is also a fundamental principle that ordinarily words used by the Legislature are not to be ignored. No ment ought to be used should, if possible, is only when there inconsistency that it is to be applied (*R. C. Mitter and Mahamad Akram, JJ.*) CORPORATION OF CALCUTTA v PROVINCE OF BENGAL. I L R. (1940) 1 Cal. 168=189 I C 717=13 R C. 107=44 C W N. 165= A I R 1940 Cal 47.

———Object of Act—Relevancy in construing section  
 See BOMBAY ABKARI ACT, S 14 B

———Object of legislation—Interpretation, in the light of—When permissible

13 R M 291  
 ———Penal statute Strict construction—Scope of rule

One has no doubt statute strictly. But section of a penal statute interpretation, the interpretation because the natural meaning (*Braund, J.*) TAN B. NAL SIDE HIGH COURT 1940 Rang L R 12=187 I C 754=12 R R. 354=41 Cr L J 515=A I R 1940 Rang 101

———Plain language—Intention—Ascertainment—Mode

Where the language of a statute is plain in itself, it is not open to the interpreter to add to it or to deduct from it or even to consider whether the rule is likely to create hardships in particular cases if it be read in its ordinary sense. The words of the enactment be considered to see the intention given (*Thomas C J, Zia-ul Hasan and Hilmiton, JJ.*) MAHADEO PRASAD v KUAR, 15 Luck. 209=185 I C 450=12 R O 194=1940 A W R (C C) 1=1939 O W N 1087=1939 O L R. 704=1939 R D 616=1940 O A. 1=A I R 1940 Oudh 67 (F B)

———Preamble

A statement in the Preamble is not of binding authority (*Roberts C J, Mya Bu and Dunkley, JJ.*)

## INTERPRETATION OF STATUTES

expressed in clear and unambiguous terms (*Kachlu, J.*) KHALIQ BABA v STATE 42 P L R J & K 222.

———Procedural law—Retrospective operation See U P TENANCY ACT (1939), S 276

1940 O W N 888.

Legislature—Relevancy  
 e parliamentary history of an

Act cannot be considered and parliamentary history body which of objects before the guide as to sought to

(*Thomas C J, Zia-ul Hasan and Hilmiton, JJ.*) DALSINGAR SINGH v JAINATH KUAR 15 Luck 229=186 I C 753=12 R O 329=1940 O L R 150=1940 A W R (C C) 48=1940 O W N 46=A I R 1940 Oudh 138 (F B).

———Promotion of object of rule  
 Where a rule is capable of a proper interpretation, the interpretation that will promote the object of the rule and not defeat it should be placed upon it (*Puranik, J.*) MUNNALAL v GOPILAL 1940 N L J 453= A I R 1940 Nag 337.

and incoherence—Rel-  
 interpretation of a statute the  
 s always a weak argument.  
 are to be relieved by the  
 be allowed to unduly in  
 pretation of a section of a  
 WERDAS KALUNAL In re  
 I L R (1940) Kar 513.

———Rejection of words—Statutory rules

———Repeal—Repeal of earlier enactment by implication

Per Tek Chand J.—It is no doubt true that it is one of the canons of the interpretation of statutes that repeal by implication of an earlier enactment is not to be favoured especially when the earlier enactment dealt with a particular subject. But if the later statute is so worded that the repeal flows from it as a necessary consequence, it is the duty of the Courts to give effect to it (*Young C J, Tek Chand, Dalip Singh, Monroe Bhide,*)

———Retrospective effect—Act altering procedure  
 Where an enactment merely alters the procedure, without altering the substantive rights of the parties the new procedure would be retrospective in its operation and would extend to rights which had accrued before the changes were made (*Mukherjee and Akram, JJ.*) DHIRENDRA NATH ROY v IJJETALI MIAH

I L R (1940) 2 Cal 148=44 C W N 729= A I R 1940 Cal 423

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## INTERPRETATION OF STATUTES

—Retrospective operation  
ACT (AS AMENDED BY ACT)

—Retrospective operation

The rule that enactments in a statute are generally to be construed to be prospective and intended to the future conduct of persons, is deeply founded in good sense and strict justice. In the absence of words to that effect a statute will not be construed so as to take away a vested right of action acquired before it was passed (*Sukhdonarain J*) **ACHALDAN v PAN RAJ** 1940 Mar L R 41 (Civ)

—Retrospective operation—Amending Act—If

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—Retrospective operation—Intention of principle to as to

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ect unless  
h was the  
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of the Act  
in question and when construing an Act introduced for the purpose of applying an equitable doctrine to certain transactions considered *ex hypothesi* to be lacking in equity one should not assume that the legislature intended that the Act should not have retrospective effect but wished to preserve rights acquired in such transactions (*Beaumont, C J and Sen J*) **RUSTOMJI DOSSABHAI v BHAI MOTI**

I L R (1940) Bom 50=187 I C 27=

12 R B 422=41 Bom L R 1310=

A I R 1940 Bom 40

—Value of

Per *Hamilton, J*—The scope of an Act is to be gathered from the Act as a whole, and the preamble is part of the Act. If, however, the language and the object and the scope of the Act are not open to doubt the sections of the Act override the preamble. There is no presumption that the words of the preamble mean against the nar (*Haasan and L*) **JAINATH KUR**

A I R 1940 Ouda 136 (1 B)

JAGIR—Devolution—Intention of Government to pre-  
vail

If there is a conflict between the original intention of Government in reserving a jagir to a particular family

## JAMMU AND KASHMIR AGRICULTURAL REVENUE

suit from a literal  
uld be given to the  
the executive orders  
ould be devoted to  
particular bill chief

the chief and also to follow Mahomedan Law which provides for inheritance by females. In such a case effect should be given to the intention rather than to the condition that modified it (*Garbutt and Brayne F Cs*) **RAHMAT BANO v AMAR SINGH** 19 Lah L T 40

JAIL ADMINISTRATION—Insubordination of con-  
sult—Beating by jail official—If justified

Whipping for insubordination may be legally adminis-  
tered in jails under proper precautions and in accordance  
with the rules given in the jail manual. In prisons

tions not complied with by lower Court—Order of lower  
Court—If liable to be set aside

Where a clear direction of the High Court that an  
enquiry in regard to the character of the defendant's  
tenancy should be made is not complied with by the  
lower Court, the order passed by the lower Court is  
liable to be set aside (*Abdul Qayoom, C J and Wazir J*) **GHULAM NABI v AMIR** 42 P L R J & K 91

—Insolvency application—Ground for dismissal—  
Applicant not disclosing part of property

The mere fact that a person applying to be declared  
an insolvent has not disclosed a part of his property  
should not be deemed to be sufficient for the dismissal  
of his application (*Abdul Qayoom, C J and Wazir J*) **IMAM UL-DIN v CHHAJU**

42 P L R J & K 81

—Jurisdiction of Revenue Court—Suit for rent—  
Agricultural land

A suit for the recovery of rent in respect of a plot of  
agricultural land should be tried by a Revenue Court

42 P L R J & K 222

—Valuation of suit for jurisdiction—Redemption  
suit

In a suit for the redemption of immovable property  
the value for purposes of jurisdiction is the amount  
found by the Court to be the value of the mortgagee's

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A person who claims to be an agriculturist must esta-  
blish by means of satisfactory evidence that the prin-  
cipal source of his livelihood is agriculture (*Abdul Qayoom, C J*) **LODH RAJ v BAHRI HAKAM RAI**

42 P L R J & K 272

## JAMMU AND KASHMIR AGRI REL REGN

*Suit under—Duty of Court to hold proper enquiry*

*Suit under—Duty of plaintiff*

In a suit tried under the Agriculturists Relief Regulation

*S 3—Scope*

The object of the legislature appears to be to include within the last clause of S 3 of the Agriculturists' Relief Regulation all claims of a pecuniary character

*S 8—Examination of parties—Necessity for*

In such a case, the court is bound to examine the parties according to the provisions of S 8.

*S 60—Agriculturist—Meaning of—Agriculturists Relief Regulation*

The word "agriculturist" cannot be given a different meaning under S 60 C P Code, from that given under

Under S 60 C P Code, the words "agriculturist" and "agricultural land" are not to be construed narrowly. The words "agriculturist" and "agricultural land" are to be construed liberally. The words "agriculturist" and "agricultural land" are to be construed in accordance with the ordinary meaning of the words. The words "agriculturist" and "agricultural land" are to be construed in accordance with the ordinary meaning of the words.

*S 60 (1) (c)—Agriculturist—Finding as to—Necessity for*

Before giving the benefit of S 60 (1) (c), C P Code, to any person, there should be a definite finding that that person is an agriculturist (Abdul Qayyum, C J)

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## JAMMU AND KASHMIR C P CODE, O 21,

R. 16

and Wazir, J) MADAD ALI v SUJAN SINGH  
42 P L R J & K, 316  
'for agricultural

residential house  
from attachment  
for cultural purposes

(Wazir, J) MADAN LAL v GIAN CHAND  
42 P L R J & K 359  
—S 115—Another remedy open—Revision—

could bring a separate suit  
to be revised, the High  
Court in revision (Kichlu,

J) MAHOMED v DEWANANI VIDYAWATI  
42 P L R J & K 221

—S 145—Execution against surety without previous notice—Effect of—Surety substantially complying with liability—Execution of decree against his property—Property

The attachment of the property of the judgment debtor's surety without previous notice to the surety calling upon him to show cause is *ultra vires*. Further, if the surety has substantially complied with his liability

—S 115—Return of plaint at plaintiff's

request requested for the return of the  
plaint and that the suit was beyond the  
jurisdiction of the Court and the Court

*O 17 R 3—Order under—Revision*

An order passed under O 17, R 3, C P Code, is appealable and as such no revision can lie against that order under S 115, C P Code (Abdul Qayyum, C J)

set aside on that ground alone (Abdul Qayyum, C J)  
BASTI RAM v HARI RAM 42 P L R J & K 269

—O 21, R 16—Application for execution by assignee—Objection by judgment debtor that assignment is without consideration—If tenable

Where an assignee of a decree files an application for execution an objection by the judgment debtor that the assignment of the decree was without consideration is not tenable, because, it is immaterial for the judgment debtor whether the consideration is paid by the assignee of the decree to the assignor or not (Wazir, J)  
GIAN CHAND v LADHA SHAH

42 P L R J & K

## JAMMU AND KASHMIR C P CODE, O 21 A,

## JAMMU AND KASHMIR CR P CODE S 133

E 8

O 21-A, R 8—*Rejection of insolvency application—Grounds—Non-disclosure of part of assets*

Applications for declarations of insolvency are rejected on the grounds mentioned in O 21 A, C P Code. The mere fact that the applicant did not disclose any part of his assets by itself is sufficient for the rejection of the application.

Where a whole suit is referred to the arbitrator for decision and the arbitrator gives an award refusing to refer the suit to arbitration, the award becomes void.

The only alteration in the arbitration

(2) of para 15

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42 P L R J & K 349

Appointment of pleader—Property

Qayom, C. J. DIAL v FIRM BHAGAT SUXH

DAVAL AMIR CHAND 42 P L R J & K 161.

(c)—Scope—Objections

validity of the order of

within the purview of

P Code (Wazir J)

42 P L R J & K 349

21—Decree in accord-

record finding

Before passing an order under O 40, R 1, C P Code, the Court ought to record a clear finding in

If a company is solvent and there is a genuine dispute about an alleged debt an order for its winding up would deprive the company of its right to have the question between it and the creditor decided in the normal way by the Civil Court constituted for the purpose.

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O 41 E 23—Order of remand—D

Duty of Subordinate Courts to follow

When a case is remanded by an appellate

liable of carrying on a business

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K 218.

O 41, R 31—Judgment—Duty of appellate Court

It is the duty of an appellate Court to state in its judgment the reasons of its coming to the decision. It must also state what the facts of the case are. It must see that its judgment on the face of it shows that the

JAMMU AND KASHMIR CRIMINAL PROCEDURE CODE Ss 112 and 137—Omission to give proper substance of information—Irregularity—If curable

The omission to give a proper substance of the information in the order recorded under S 112 Cr P Code, does not vitiate the entire proceedings without proof of

Such an omission is covered

(Abdul Qayom C J) ANANT

42 P L R J & K 112.

ation under—Magistrate absent

Hearing—Fresh notice to parties

is absent from the station on the

1 day fixed for the hearing of an application under S 133,

Court.

JAMMU AND KASHMIR CR. P. CODE, S 139-A | JAMMU AND KASHMIR CR. P. CODE, S 250.

provisions of S 139 A, Cr P Code and an order absolute can only be passed by him after a proper enquiry has been made in accordance with this provision (*Abdul Qayoom, C J*) **ABDUL RAHIM v LABHU RAM** 42 P L R J & K 377

—S 145 (1)—*Initiation of proceedings—Duty of Magistrate*

Proceedings under S 145, Cr P Code, cannot be started unless the Magistrate is satisfied, on information received, that a dispute likely to cause a breach of the peace exists on the grounds of the offence or the offence is to be sent to Court. These things are mentioned in paragraph 1 of S 145 and an

initiated

The provisions of S 145 (1) Cr P Code, are mandatory and a disregard of these provisions vitiates the entire proceedings in the case (*Abdul Qayoom, C J*) **ANANT SINGH v RAM SINGH** 42 P L R J & K 379

—S 162—*Statements entered in Police Diaries—Use of*

The statements recorded by the Police and which are entered in the Police Diaries are no evidence either for the prosecution or against it. These statements can be looked into by the Courts for particular purposes which are enumerated in S 162 Cr P Code and the Courts cannot refer to them for any other purpose (*Rachpal Singh, C J*) **STATE v NABIR MOCHI** 42 P L R J & K 331

—S 164—*Recording of confession—Duty of Magistrate to put questions*

—S 190 (c) Cr P Code—*Specially empowered under S 190 (c) Cr P Code* (*Abdul Qayoom, C J*) 42 P L R J & K 209

—S 209—*Duty of Magistrate*

In a case triable by a Sessions Court if the Magistrate finds that a *prima facie* case has been made out against the accused and respectable witnesses have given evidence he must commit it to the Sessions. He should not take upon himself the discharge of a duty which under the law is entrusted to a Sessions Court (*Abdul Qayoom, C J and Kichlu, J*) **MOHANMAD KHAN v STATE** 42 P L R J & K 128

—S 221 (7)—*Applicability*

The enhanced punishment referred to in S 221 (7), Cr P Code relates to infliction of enhanced punishment as provided by S 75 of the Penal Code. The provisions of S. 75 of the Penal Code are not to be

inflicted A I R 1933 Nag 315, Foll (*Abdul Qayoom, C J and Wazir, J*) **MAHOMED AYAN v STATE** 42 P L R J & K 211.

—S 221 (7)—*Omission to set out previous conviction—Interference with sentence—If justified*

The mere omission to set out the previous conviction in the charge sheet is not sufficient reason for interfering in appeal or revision with the sentence passed unless there has been a failure of justice caused by this omission. (*Abdul Qayoom, C J and Wazir, J*) **MAHOMED AYAN v STATE** 42 P L R J & K 211.

—S 239—*"Same transaction"—Test*

Where the accused who was charged and convicted under S 467/109 of the Ranbir Penal Code for forging a sale deed was jointly tried along with another person of the Registration Act before the vendor before the accused was acquitted for

the same offence as to signature of parties and charges as the execution of the sale deed and its registration were parts of the same transaction and were linked together in order to complete one transaction (*s.c.*) conveyance of the property in favour of the accused

*Held, further*, that in determining whether there was a misjoinder of charges or not, one had not to see the result of the trial but that it was necessary to see what the accusation against the accused persons was (*Wazir, J*) **DEVRAJ v STATE** 42 P L R J & K 205.

—Ss 239 and 531—*Misjoinder of persons—If curable.*

A misjoinder of persons contrary to S 239, Cr P Code, is curable by S 531, if it has not in fact occasioned injustice (*Wazir, J*) **DEVRAJ v STATE** 42 P L R J & K 205

—S 250—*Award of compensation—Procedure*

—S 250—*Complaint given to Police—Action under section—If can be taken*

Action under S 250, Cr P Code can be taken where the case is instituted upon complaint or upon information given to a Police Officer (*Abdul Qayoom, C J*) **LAKHMI DEVI v STATE** 42 P L R J & K 381.

—S 250—*Powers of Magistrate—Fine on complainant*

S. 250 Cr P Code empowers a Magistrate only to grant compensation to an accused person and does not authorise him to impose any punishment on a complainant by way of fine. Besides, whatever the amount of compensation is determined by the Magistrate, the whole of it has to be given to the accused and Magistrate has no power to order the distribution of that amount to persons other than the

## JAMMU AND KASHMIR CR. P CODE S 263

Qayoom C J) LAKHMI DEVI v STATE

—S 263—Summary trial—Entries in register—Duty of Magistrate

In a summary trial, the Magistrate should see that entries made in the Register are carefully made and contain all the necessary particulars (Abdul Qayoom C J) STATE v TARA CHAND 42 P L R J & K 256

—S 288—Statement transferred to Se Use of

The statement of a witness transferred to under S 288, Cr P Code, can be used as substantive evidence for all purposes (Abdul Qayoom C J and Wazir, J) ALI MOHAMMED v STATE 42 P L R J & K 123

—S 342—Examination of accused—Duty of Magistrates

The object of the examination of an accused person under S 342 Cr P Code is only to enable the accused

The failure on the part of a Magistrate to examine the accused under S 342, Cr P Code, after the conclu

would exist no necessity for setting aside the final order which is just and correct simply because the procedure adopted was wrong (Abdul Qayoom, C J) SUNDAR 47 P L R J and K 179

payment of fine (Wazir, J) SONA RISHI v STATE 42 P L R J & K 355

—S 414—No sentence of fine—Appeal, if barred

S 414, Cr P Code will not be a bar to an appeal when the trial Magistrate has not passed any sentence of fine (Abdul Qayoom C J) NURA MALIK v STATE 42 P L R J & K 251

—S 415—Summary trial—Appeal—When lost

—S 423—Appeal from or Retrial—Order for—When just

Where it appears from the record that there was some

## JAMMU AND KASHMIR CR. P. CODE, S 514

If a sentence of imprisonment imposed upon the accused by the trial Court is remitted by the appellate Court, the mere increasing of the fine by it is not enhancement of the sentence within the meaning of S 423 Cr P Code (Abdul Qayoom C J) KHUSHI MOHAMMAD v STATE 42 P L R J and K 187

—S 437—'Discharged'—Meaning of—Duty of committing Magistrate

does " but larged of Ses sion The committing Magistrate should not usurp the functions of a Sessions Court and take upon himself the duty of appreciation of evidence of doubtful credibility (Abdul Qayoom C J) GAFAR GUJRI v STATE 42 P L R J & K 114

—S 465—Enquiry into mental condition of accused—Duty of Sessions Judge

—S 476—Expediency of prosecution—Finding as to—Absence of—If fatal to proceedings

The absence of a finding by the Court ordering prosecution under S 476 Cr P Code, that it is expedient in the interests of justice that an enquiry should be made is not fatal to the proceedings started under that section (Abdul Qayoom, C J) TOTA RAM v STATE 42 P L R J & K 66

—S 488—Child's right to maintenance—Offer to maintain it not made in good faith

—S 488—Compromise—Order on basis of—If can be passed

When a compromise between the husband and wife contains conditions which are outside the purview of S 488 Cr P Code, an order under that section cannot be passed on the basis of that compromise and Criminal Courts have no jurisdiction to enforce that compromise (Abdul Qayoom, C J) GUJAR MAL v AMRIT KOER 42 P L R J & K 371

Offer by husband to maintain wife—

under S 483 Cr P Code, the husband's wife with him on the terms

without making that enquiry is liable to be set aside (Abdul Qayoom C J) DEVI PRASAD v STATE

## JAMMU AND KASHMIR CR P. CODE S 526

—S 526—Sessions case—Transfer from one Judge to another—Power of High Court

S 526, Cr P. Code, empowers the High Court to order a transfer of a Sessions case from one Judge to another (*Abdul Qayyum, C J and J*) TARA CHAND v STATE.

42 P.L.R. J &amp; K 138

—S 528—Transfer application—Notice to party—Necessity for

When a transfer application is received by a Sub Divisional Magistrate, it is his duty to use a notice to the other party and his disposing of the application.

If a witness who had been summoned by the Magistrate under S 540, Cr P. Code does not appear, he ought to be summoned a second time or the Magistrate should take suitable action to force his attendance in Court. An order dismissing the case on the ground of

trial

LATION S 30—Confession of accused—Admissibility against co accused

Under S 30 of the Evidence Regulation, the confession made by an accused person is admissible in evidence against his co accused (*Abdul Qayyum, C J*) AMAR NATH v STATE 42 P.L.R. J & K 210

JAMMU AND KASHMIR LEGAL PRACTITIONERS REGULATION S 12—Duty to respect law

C J ALI AHMAD v STATE JJ MAHOMED AZAL BEG In re 42 P.L.R. J & K 138

JAMMU AND KASHMIR LIMITATION REGULATION S 5—Sufficient cause—Negligence of pleader's clerk

his clerk and *Qay* BAKH 42 P.L.R. J & K 56

—S 20—Payment or acknowledgment—If material

If the payment is satisfactorily established to be made within the period of limitation then it is immaterial as to when the acknowledgment is made. It is payment and not the acknowledgment which saves the limitation.

## JAMMU AND KASHMIR POLICE REGISTER, No 10.

—Arts. 67 and 108—Scope

Where a decree was passed against two persons and

—Art 158—Application to set aside award—Limitation

According to Art 158 of the Limitation Regulation, the period of limitation for an application to set aside an award is sub-STATE v

42 P.L.R. J &amp; K 161.

—Art 182 (5)—Application in accordance with law—Application omitting date of decree

The mere omission to give the date of the decree is not a material defect so as to render the execution application one not in accordance with law. (*Abdul*

it is concerned The (*Abdul Qayyum, C J*)

v DHANI RAM

42 P.L.R. J &amp; K 273

LUNACY REGULA-

tion, ss 62-65—Duty of Court to hold proper enquiry

In a proceeding under the Lunacy Regulation, the Court should hold a proper enquiry in accordance with the provisions of ss 62 to 65 of that Regulation. It should record a clear order directing an inquiry into the lunacy, issue notices to all the relatives of the lunatic in regard to the inquiry to be held, and record all the evidence in the case in the presence of the assessors. Otherwise, its order is liable to be set aside.

Sentence

In a case of conviction under S 16 of the Motor Vehicles Regulation for overloading the trying magistrate should award an adequate sentence, as this violation of the Regulation is most dangerous for public

weather road eight extra passengers one of whom was sitting on the roof of the lorry, a deterrent sentence should be awarded (*Abdul Qayyum, C J*) STATE v LOKNATH 42 P.L.R. J & K 369

—S. 18 A—Lorry driver sentenced to fine—Enquiry if fine could be recovered from lorry owner—If necessary

o a fine under S 5 enquiry if the fine the lorry is not provision of law as regulation (*Abdul*

LB J & K CE

from

## JURISDICTION.

## LAMBARDAR

tion cannot be taken away except by express words or village—Lapse of holding—Land entered in settlement—Effect

A.I.R. 1940 Rang 84 (S.B.).

—Valuation for—Basis of.

For the year 1939

ing the poses as the khudkasht of the *hissedars*, it raises a presumption against the *khaskars* which they are bound to refute,

cannot turn the *hissedars* out, as they have slept on their rights for such a length of time as to bar their suit by limitation (*Harper, S M*) JIVA NAND v GOVIND RAM 1940 R D 326—1940 A W R (B R) 179

KARACHI CITY MUNICIPAL ACT (XVII OF 1933), Ss. 117 and 251—Construction and scope—Revision from order of Magistrate in appeal against assessment—Procedure and powers of Court—Tribunal—If Court or *bersama darsanah*—Interference—*See* 1939

LAHORE HIGH COURT RULES AND ORDERS, Vol I, Chap. 12 L. R. 12—Sale set aside at instance of judgment debtor—Liability of decree-holder for auction—*See* 1939 Dig., Col. 700

in spite of merely at the benefit, it older in the

—S  
Absence of proper notice—Effect on suit.

In a suit against the Municipal Corporation setting forth with reasonable cause of action is proved to have Corporation under S 255 after the action mentioned in the plaint, the of notice under S 255. Any notice date of the cause of action is of no SHAHBAN MOHILE t. KARACHI MUNICIPAL CORPORATION. 188 I.C. 67

A.I.R. 1940 Sind 109

KHANDWA GINNING AND PRESSING COTTON TAX VALIDATING ACT (VIII OF 1938)—If operative.

Act VIII of 1938 is a taxing Act and tancy and hence it is inoperative. (*See*

—Chap 12 L. R. 20 (5) — Applicability—Attachment *See* 1939 Dig., Col. 700 PILADA RAM v TULSI DAS ASA NAND. 186 I.C. 633—12 R L 407—A.I.R. 1940 Lah 30.

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Dig., Col. 700

—Village pa  
PANCHAM SINGH v. DEB RAM

185 I.C. 601

—Dealing with by different branches—R

Colony—  
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## LAMBARDAR

horse breeding grant. (*Brayne, F. C.*) NUR MOHAMMAD F. QAZI ABDUL MAJID. 19 Lah L.T. 9

Appointment of—Considerations.

To appoint a lambardar, the first consideration is the fitness of the person for the office. The second consideration is the fitness of the land for the office. The third consideration is the fitness of the person for the office. The fourth consideration is the fitness of the land for the office. The fifth consideration is the fitness of the person for the office. The sixth consideration is the fitness of the land for the office. The seventh consideration is the fitness of the person for the office. The eighth consideration is the fitness of the land for the office. The ninth consideration is the fitness of the person for the office. The tenth consideration is the fitness of the land for the office.

Not a *Munim* or agent take the place in matters of the lambardar himself (*Garbett, F.*) BUTA SINGH & SWINDAR SINGH 19 Lah L.T.

Appointment—Consideration—Colony Villa In colony villages, the first consideration in the

Lambardari once given becomes hereditary and the accident of satisfaction given by a person over a brief

Appointment of—Co sharer who has transferred his share to a waqf u'-aulad—If can be appointed

A mutwalli of a waqf can be held to be a co-sharer for the purposes of the appointment of a lambardar. Hence a co-sharer who has transferred his share to a waqf u'-aulad is competent to be appointed a lambardar

In appointing a lambardar, the Collector cannot pass over the eldest son of the deceased the mere ground that he is blind and until a lambardari passes from the direct hereditary in the line into which it (*Garbett, F.C.*) GURBAKSH SINGH

Appointment—Person appointed place of one dismissed—Right to file order of reinstatement of dismissed PUNJAB LAND REVENUE ACT, S. 16

Dismissal—Grounds—Failure to depose in Court as promised

Dismissal—Grounds—Failure to depose in Court as promised

Dismissal—Grounds—Failure to depose in Court as promised

## LAND ACQUISITION ACT (1894), S. 6

S 3—'Land'—Meaning of.

For the purposes of the Act, land includes buildings and also trees and standing crops. The definition is under the Act (*Weston, J.*)

S 3 (d) and 30—Reference by Collector to Subordinate Judge—Decision in—Appeal

Ss 4 and 6—Identity of property—How determined—Notifications under Ss. 4 & 6—Which to govern.

No interest in favour of Government arises from the notification under S 4. Although the date of the notification under S 4 is the date at which values are to be considered, the identity of the property is determined by the notification under S 6. If in the period between the two notifications a part of the property has ceased to exist, whether by act of the owner or by accident, the

S 6(3)—Public purpose—Proof—Notification—If conclusive—Land granted by Government—Condition that Government can acquire same for public purpose without compensation—Proof of public purpose—Onus.

When the Land Acquisition Act was in force, certain Crown land was in the predecessor in title which provided, inter alia, that a certain quantity of ground being required by Government for roads or other public purposes it should be given to the Government on condition that the Government should not be allowed to use the land for any other purpose than the purpose for which it was given. The question was whether this condition was binding on the Government. The court held that it was not binding on the Government. The condition was a condition of the grant of the land to the Government, and the Government was not bound to comply with it. The condition was a condition of the grant of the land to the Government, and the Government was not bound to comply with it.

the meaning of the provision in the Act and offered to lead evidence, but he was not allowed to do in view of S 6(3) of the Land Acquisition Act

terms of the Act, the right to refuse compensation must depend on proof on the part of the Government that the land was required for a public purpose, for which purpose the Government might put in the notification as evidence on their side, but it was not conclusive for purpose of defeating the claimant's right to compensation under the Act, (3) that evidence led could





## LAND ACQUISITION ACT (1894), S 54.

The word 'persons' in S 27 (1) of the Land Acquisition

## LANDLORD AND TENANT

must be deemed to have abandoned the land so as to

The Collector cannot, in appeal to the High Court, contracts have not been shown to be illegal or otherwise unenforceable, the claim for *tangiana* has to be allowed

AHMAD v.

P 208 =

LT 808

tenants on

tenant—

1939 Dig.

ARENDRA

C 472 =

O Cal 18

exclusive

settlement

Accrual of

share at

BENGAL

N 221

Sub-tenant

effected before grant of Loan—Advances—Right to priority—Agriculturists' Loans Act, S 4 See 1939 Dig., Col 706 ARUNACHALA

under permanent lease—If liable to be ejected

A sub tenant under a permanent lease who is not

## LANDLORD AND TENANT

(4) LAND TENURE

(5) LEASES

(6) MADRAS ESTATES LAND ACT.

(7) MALABAR TENANCY ACT

(8) T. P. ACT, Ss 105 TO 117

Abadi—Ryot's right to build dwelling house

A ryot cannot, without the permission of the landlord, build a dwelling house on the *sakan* in front of his house (*Thom C J*) DADRI LONIA v DWARKA PRASAD

1940 A.W.R. (H.C.) 198 =

1910 R.D. 131 = 1940 A.L.J. 229 =

A.I.R. 1940 All 240.

Abandonment—Land given to *rijaya* for residential purposes—Execution by him of *wakf-deed* in respect of that land—Effect of—*Basements Act*, S 62 (f)

Where a *rijaya* to whom land is given for residential purposes executes a *wakf-deed* in respect of that land or allows other persons to build a *Thakurdwara* on it, he

Effect—Failure to adopt remedial operation—See 1939 Dig., Col 709 KEDAR NATH v BIRENDRA BIKRAM SINGH 1940 E.D. 49

Ejectment—Not occupancy ryot bona fide holding under trespasser—Liability to ejectment by rightful owner See 1939 Dig Col 709 ABDUL LATIF v NAWAB KHAJAH HABIBULLA 185 I.C. 715 = 12 R.C. 401

Ejectment—Notice to quit—Accuracy—Tenant setting up adverse title on expiry of lease

Where a lessee of a house on the expiry of the lease fails to pay rent and sets up a title adverse to the lessor, his position is that of a tenant on sufferance and he is no better than a trespasser and he could be turned out of the house at any time without any notice to quit (*Iqbal Ahmad, J*) RAHMAT ULLAH v MAHOMED HUSAIN 1940 A.W.R. (H.C.) 407 =

1940 A.L.J. 502 = A.I.R. 1940 All

Ejectment—Reversionary right after termination of possession, if justified

## LANDLORD AND TENANT.

*Ejectment—Service—tenure-holder—Refusal to perform services—Right of landlord to eject—Acceptance of quit rent—If a bar to ejectment—If creates occupancy tenancy.*

advantage of any breach of covenant or condition of the lease, he must take care not to do anything which may be deemed an acknowledgment of the continuance of the tenancy, and so operate as a waiver of the forfeiture.

to the tenant to quit the premises after the breach of covenant and with knowledge thereof amounts to a waiver, because the giving of the notice recognizes the continuance of a tenancy. (*Harries, C. J. and Manohar Lal, J.*) SHIVA PRASAD SINGH v. MANDIRA

medy-Forum-

In the case of a grove, if a tree is cut, a suit for damages lies in a Civil Court. The cutting of a tree  
on from the grove.  
NARRADESHWAR  
1910 RD 21=  
A WE (B.R.) 47

breach of the original contract or agreement and is

1940 O L R 603-1940 A W R (C C) 418-  
1940 O W N. 894-1940 O A. 845-1940 R D 431-  
A I R 1940 Oudh 411.  
—Grass—Trees planted on banjar land—Transfer.

trees constitute a grove that the land would also go with the trees or grove. A transferee of such land is clearly a trespasser on the Banjar land, which the transferor has no right to transfer. But the trees of course

**LANDLORD AND TENANT.**

belong to the transferee (*Mekta, S M*). **KESHI SINGH**  
**v. RAM DULAREY.** 1910 E D 191 (1) =

**LANDLORD AND TENANT**

—*Nature of tenancy—How determined—Separate tenancies created in respect of original agricultural*

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—*Holding over—Assent of landlord—Inference from conduct—Suit for rent—If amounts to expression of assent to holding over—Landlord protesting against holding over for several years and then suing for rent—Effect of.*

In the absence of anything to indicate that the landlord has declined to consent to the tenant holding over after the expiry of the lease the institution of a suit for rent may well be deemed to be an expression of assent to the tenant's holding over. But, when the landlord has for several years, protested against the tenant holding over and then has instituted a suit for rent that cannot be held to amount to a consent to his holding from the expiry of the period of the lease. It is inconsistent with the landlord's conduct and can merely be evidence

the absence of proof of this

Where a person is unable to prove the terms of the tenancy, it must be assumed in the absence of evidence to the contrary that the tenancy was tenancy from year to year or a tenancy-at-will. Such a tenancy can be determined on the expiry of the year or by a mere demand for or suing for possession (*Mohamad Noor and Manohar Lall JJ*) **SURIA MOHAN v. RAMA PRASAD**  
 189 I C. 745=6 B R. 860=13 R P. 134=  
 A.I.R. 1940 Pat. 37.

—*Nature of tenancy—Tenancy for gathering and enjoying fruits from trees—If governed by Bengal Tenancy Act*

If a tenancy is for the purpose of gathering and enjoying fruits from trees for horticultural or horticulatural the operation exclusion of the ) **SAILENDRA**  
 14 C W N. 582  
 of, tenancy—

additional area at different rates.

A clause in the Kabuliyaat whereby the tenant agrees

A person cannot claim to be entered as occupancy tenant, where there is nothing in the evidence to show

DIANSEA.

—*Khaikari rights—Lapse of khaikari holding—Land entered as khudkasht of *khailars*—Presumption—Effect on khaikari rights* See **KUMAUN RENT AND TENANCY RULES, SCH I, GROUP A, SERIAL 16**

agricultural purposes.

The fact that a tenancy is for agricultural purposes does not *prima facie* indicate that it is permanent or indeed that it is more than an annual tenancy. The inference of permanence is an inference which it is diff-

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19 Pat. 433 = A.I.L. 1910 Pat 518

—*Lease—Assignment—Privily of estate between lessor and lessee*  
**SUKHDEO PAND**

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—*Malkana—Land revenue—If*  
**MAHMUDUL HA**  
**GONDA.**

—*Possession—When could be decreed to a landlord* See 1939 Dig, Col. 715. **SINGHAR SHRI**

## LANDLORD AND TENANT,

A lessor who has, by his own act, prevented his lessees from enjoying the demised premises during a

section it is open to a Court to presume that the relationship which has determined in the rent suit continued after that. Therefore where the wife of a co-sharer

**Rent—Liability for—Disputes paramount.**

Where a tenant is dispossessed in execution of a

costs incurred in making the cesses into the collectorate

*Held*, that the suit was not a recover the unpaid balance on a included items which could not suit (*Henderson and Sen, J. GHOSH v. TRUSTEES TO THE MATI LAL* 71 C.L.J. 429)

**Rent—Place of payment.**

The place for the payment of the rent is a matter of contract, and in the absence of express provisions, is to be implied from custom, and if there is no custom it is

**Rent—Reduction—Agreement for—Once—Acceptance of reduced rent for years—Effect of. See**

## LANDLORD AND TENANT

1939 Dig, Col. 718. KANTI CHANDRA GHOSAL v. SUCHITRA SUNDARI DASSI, 185 I.C. 560 = 12 R.C. 385.

—Remission—Collector's powers with  
—Dual capacity.

or has both an administrative and a judicial On the administrative side it is open to him when he is giving the ground applied to S.M. and

NAVIN CHANDRA v. RAM CHANDRA, R.D. 191 (2) = 1940 A.W.R. (B.R.) 76.

—Rent—Remission slip—Interference with by Judicial Court.

The entry in a remission slip is not liable to be

damages for dispossession—If can be gone into. See C.P. CODE, O. 8, R. 6 21 Pat.L.T. 821.

—Statutory tenancy—Leave in favour of wife Transac- of wife. KHAN v. (Lupp) 97.

—Surrender—Acting upon—Evidence—Sufficiency.

—Termination of tenancy—Duty of tenant to deliver up possession—Sub tenant holding over—Landlord's remedy

The liability of a tenant for damages for breach of possession after the not depend upon him and his sub- held that a tenant under an agreement without any stipulation that he at the deliver

—Termination of tenancy—Tenancy at will and Tenancy for fixed term

In the case of a tenancy-at will, the tenancy does not notice to quit has been served on the as denied the landlord's title. But in the cy for a fixed term, the tenancy is deter- ically at the expiry of the term of the that date the relationship of landlord and tenant does not subside, unless it is proved that there was a novation of contract, express or implied and

## LANDLORD AND TENANT.

the tenancy has been converted into a tenancy at will or a tenancy from year to year. (*Tek Chand and Dulip Singh, J.J.*) BANWARI LAL v. MST. HUSSAINI

42 P. L. R. 535—A. I. R. 1940 Lah. 410

—Trees—Transfer of zamindari—Trees, if pass with the zamindari

Trees form part of the soil and they pass with it. Trees on a zamindari appertain to it and on the transfer

proprietor entitled to a share of produce of the trees—If entitled to get an injunction against under-proprietor in respect of trees. See 1939 Dig., Col. 721. EWAZ MAHOMED v. NAGESHWARI PRASAD.

15 Luck 121

LAND TENURE—Creation of Nature of relationship—Effect of in to exist

In the case of derivative tenure, the holder of a tenure and the holder of a sub-tenure immediately subordinate to it is that of landlord and tenant. It is not correctly represented as that of a person entitled to receive rent from another by reason of an assignment from a person previously entitled to receive such rent. The sub-tenure is a right in the basis that each interest is a right in itself. It is true even in the case of an *Idardar* often interposed between a tenure. If therefore for any reason an inferior ceases to exist whether by lapse of time of a tenure which is not permanent) or by abandonment or otherwise, he ceases to operate as bringing to an end the tenure imposed upon the superior interest.

(*George Rankin*) PROFULLAH NATH TAGORE v. SANTOSH KUMAR DAS

190 I. C. 472—

1910 O. L. R. 506—1910 P. W. N. 781—

21 Pat. L. T. 1005—6 B. R. 878—

1104—Pradhani—Custom—Village first cultivated later than 1788.

The system of village headman is universal among

(*Rankin*) JAGADISH CHANDRA DEO v. DEBNATH MAHTO.

189 I. C. 606—13 E. P. C. 40—

1940 O. L. R. 506—1940 P. W. N. 781—

21 Pat. L. T. 1005—6 B. R. 878—

## LEASE

(*Skemp, J.*) SHIO RAM v. RAM CHAND

A. I. R. 1940 Lah. 356.

—Zabli bhogra—Assessment—If can be challenged in civil suit. See 1939 Dig., Col. 723. HARIHAR DORA v. UPENDRA PATI.

6 B. R. 218—185 I. C. 602—

12 B. P. 384

LEASE—Assignment—Purchaser of lessee's interest at Court sale—Liability for rent to lessor—Privy of estate—Interest on arrears of rent—Liability for.

by privy of estate on the rent to the lessor, the title of the assignee is not followed by the assignee to vest the interest in the sale. The manner in which the interest of the lessee becomes vested in the assignee is immaterial provided the method is such as in law vests the whole interest of the lessee in the assignee. But the liability to pay interest on arrears of rent is not transferred to the assignee.

12 B. R. 485—42 Bom. L. R. 279—

A. I. R. 1940 Bom. 154.

—Construction—Covenant to pay all taxes levied by Government—Liability to pay education taxes subsequently levied by District board.

same under the lease

Held, that the education tax was not a tax levied by the Government but was levied by the District Board.

12 B. C. 400.

—Construction—Permanent lease—Bemadi patta—Settlement of land for erection of Gola house

INCOME TAX, B & O v. VISHESHWAR SINGH.

187 I. C. 691—12 E. P. C. 623—5 B. R. 521—

A. I. R. 1940 Pat. 21

—Construction—Use of words like "perpetual" and

**LEASE.**

—Mining lease—Nature of—If a sale of land or minerals

A mining lease is not a mere sale of the land or

—Nature of—Ahata given to indigo manufacturers—Status of lessee and their successors—Original grant, if nullified by bringing land under cultivation—Origin of tenure unknown—Inference of permanent character—Circumstances

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fact of the *ahata* being brought under cultivation cannot nullify the lease originally granted. Although the origin of a tenancy may not be known, yet if it is proved that the tenant and his ancestors were in possession of the tenure for a long time and had built a pucca house on the same and from time to time the tenure had been transferred by succession and purchase without protest by the landlord, a Court is justified in presuming that the tenure is of a permanent character (*Iqbal Ahmad and Verma, J.J.*) **RAM DAUR RAI v LACH HMI PRASAD** 1940 A.W.R. (H.C.) 603

—Permanent lease—Conditions for transfer—Fulfilment—Condition that lessee would remain liable for is estab  
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100 A.U. 42—L.R.C. 640  
—Sub lease of remainder of term—If operates as absolute assignment of lease—English law and Indian

Sastry, J.) **NANJAPPA C GOUNDAN** 51 L.W.  
A.I.R. 1940 Mad

—Third party in possession—If can question its validity

of a usufructuary mortgage the person in whose favour the document is executed is entitled to possession and in both cases there is an advance of money to the executors of the deed. But while there is a statutory liability for accounting cast upon the usufructuary mortgagee by S. 76 (g) of the T.P. Act, there is normally no such liability on the lessee in the case of *zareeshgi* lease. Whereas in the *gauge* there is a transfer engaged in favour of the *zareeshgi* lease pure a security for the amount

**LEGAL PRACTITIONER**

while there is no right of redemption vested in the

**LEGAL PRACTITIONER**

See also (1) BAR COUNCILS ACT.

(2) LEGAL PRACTITIONERS ACT

—Admission on point of law—Binding nature—Court, if can decide rights of parties on the true view of the law

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1940 A.W.R. (P.O.) 86=1940 O.W.N. 415=  
42 P.L.R. 339-6 B.E. 618=  
A.I.R. 1940 P.O. 80 (P.O.)

—Advocate—Power to compromise on behalf of client

An advocate who files a power in form IV prescribed in the Sind Courts civil circulars which empowers the advocate to appear and act has no power to compromise on behalf of his client, as a power to compromise is not warranted by Form IV. In the absence of any general or special power from the client to compromise, such an advocate has no authority to compromise (*Davis, J.C. and Weston, J.*) **Haji HUSSAIN HABIBULLAH v Haji VALI MAHOMED** I.L.R. (1940) Kar 467

—Authority—Offer to be bound by special oath on behalf of his client—Propriety of—Special authority—Necessity See 1938 Dig., Col. 879 **LAXMIBAI v BAJORAO** I.L.R. (1940) Nag 310

—Authority to compromise—Words 'Sulahnama

does not know how to maintain the dignity of the Courts is not fit to be a legal practitioner (*Abdul Wahid and Wazir, J.*) **HARNAM SINGH**  
In the matter of

42 P.L.R. 3 & K 275  
inashin lady—Pleader appearing for

every particular, so that it may implicitly rely upon them. This is a rule which admits of no qualification and it is an honourable obligation of the Bar and of great value in the administration of justice. It is therefore improper on the part of Counsel to make statements of fact before the Court which are based on mere surmises or guesses (*Gwyer C.J., Sulaiman and*

## LEGAL PRACTITIONER.

LEGAL PRACTITIONERS' ACT (1879), S. 13.

—Misconduct—Appearance for opposite party—When not justified

In order to prevent a counsel for other party, he must have a definite fee paid or he must have instructions from one of the parties to make it improper for him to appear for other party (*Marsh, S. M. v. Gur Narain Mukhtar, In re* 1939 R.D. 641 (2)=1940 A.W.J.)

—Misconduct—Disciplinary under S. 188, Ranbir Penal Code.

AMAR KRISHNA NARAIN SINGH v. NAZIR HASAN.  
14 Luck 723

by justice.

The charges of professional misconduct must be clearly

mere ground from which indiscretion

GUR NARAIN

1939 R.D. 641 (2)=1940 A.W.J. (1939) 3 (2)

—Misconduct—Re-admission of pleader after removal from roll—Practice.

When persons are struck off the roll, not irrevocably shut behind them, but of industry, straightforwardness of life, and which shows repentance and determination they may ultimately find their way back to the noble profession which they once disgraced. That lenient outlook results from the consideration that it is

LALJEE

—Unprofessional conduct—Advocate struck off the

money—Subsequent

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K. J. ANADYO

1940 Mad 81=

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1940 A.W.R. (P.O.) 158=52 L.W. 777=

AIR 1940 P.C. 204 (P.C.).

—Lien of—If prevalent against parties

—Costs due by one party to another—Set-

tee amount payable by latter to former—

dictor's lien—Equities See 1939 Dig.

WAR F. J. LALJEE v. EBRAHIM F. J.

ILLR (1939) Bom 692=

186 IC 351=12 RB 327.



LEGAL PRACTITIONERS' ACT (1879), S. 13

LETTERS PATENT (Bhopal), CI 7.

to the parties that a further appeal should be  
In the last mentioned case, it is necessary that  
ould be some real and outstanding point of

—S 13—Proceedings under—Duty of Court—Com  
promise between pleader and complainant—Complainant  
not wishing to proceed—Dropping of  
Legality.

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C. J. Gentle and Krishnarwami Ayyang  
SRINIVASA RAO, PLEADER COIMBATUR  
matter of

ILR (1940), Man 300—  
187 IC 144=12 RM 713=41 Cr LJ 419=  
51 L W 197=1940 M W N 161=  
AIR 1940 Mad 370=(1940) 1 M L J 259 (F B)  
—S. 13 (f)—Misconduct—Conviction for criminal  
breach of trust—Punishment

Where a pleader is convicted for criminal breach of  
trust, his name must be struck off the  
ders under S. 13 (f). (Roberts, C. J. and  
T. A LOWER GRADE PLEADER, In the  
AIR 15

—S 13 (f)—Misconduct—Fa  
accounts—Liability to be dealt with

Even if a legal practitioner has not  
bound to keep accounts for whatever  
and failure to keep accounts amount

to High Court.

Where the District Judge finds that the charge  
fe-sional misconduct has not been established  
should not go to the High Court (Roberts C  
Dunkley, J) S. K MITRA, HIGHER  
P'LEADER, In re. 190 IC 300=12 R D 21=  
41 Cr LJ 809= A J.

LETTERS PATENT—Leave to

—(Allahabad), CI 10—Judgment—Refusal to

—(Bhopal), CIs 7 and 8/1—Interpretation—  
Order of Single Judge on original side deciding claim  
under O. 21, R 58, C P Code—Appealability—Such  
order, if a "judgment".

In spite of the fact that S. 3 of the Bhopal C P.

although such an order is a judgment within the

## LETTERS PATENT (Bombay), Cl 12.

—(Bombay), Cl 12—Jurisdiction—Defendants having business outside Bombay keeping clerk in Bombay—Loans raised and goods in Bombay—Accounts kept in Bombay. If carrying on business—drawn outside but delivered endorsed by latter in. Bomt Court — Jurisdiction — Ca Dig Col 732 DAMJI H. ESSABHOY.

## —(Bombay), Cl 15—

order

*Indarnarayan, J.*—The word "judgment" in Cl 15 of the Letters Patent is obviously used in the same sense as the word 'decree' in the C. P. Code and means a decision which affects the merits of parties by determining some law and *Indarnarayan J.* SAPPAL ANASUYA

42 Bom L R 377

—(Bombay), Cl 15—Scope—Appeal to High Court against order of remand passed by appellate Court—Order of single judge confirming order of remand—Letters Patent Appeal—Maintainability—C. P. Code, S. 104 (2)—Scope and effect of

An appeal does lie under Cl 15 of the Letters Patent to a Bench of the High Court from a decision of a single

## LETTERS PATENT (Nagpur), Cl 10

Jurisdiction (*Panchridge, J.*) HARIDAS CHATTERJEE

—(Nagpur), Cl 10—Where a trial Court passes a decree outside the scope of its jurisdiction—Appeal—Permissibility

*decree apparent on record—Correction in Letters Patent appeal—Permissibility*

Where a trial Court passes a decree outside the scope of its jurisdiction—Appeal—Permissibility

—(Madras), Cl 12—"Carrying on business"—Insurance company with head office in Calcutta and branch at Madras—Madras branch not authorised to enter into contracts of insurance or make payments in respect of policies—Company if carries on business in Madras

It is settled that a company only carries on business

An originating summons brought to determine the

—CL 15—Order under S. 104 (2) of the C. P. Code and leave to appeal—Appellate—Col 734 VENKATAYYA R. SANTAPUR. 188 L.C. 634=12 —Appeal under—C.

## LETTERS PATENT (Nagpur), Cl. 10.

The condition of certificate that a case is fit one for appeal under Cl. 10 of the Letters Patent applies only to those decrees or orders which are passed by a single Judge in the exercise of his second appellate jurisdiction and to no other cases. (*Niyogi, Pollock and Gruer, J.J.*)

—(Nagpur), Cls. 10 and 27 and Rules framed by High Court, B. 10—Refusal of leave—Second IKA-

53=  
47.

—(Patna), Cl. 10—New point in Letters Patent appeal—Competency

The High Court in appeal Patent cannot entertain any

—(Rangoon)—Powers prerogative writs

The Letters Patent sets out the jurisdiction of the

peal from decrees in the original side hearing without

were appreciated and correctly applied, secondly whether there was evidence upon which the Court of first instance whether any material over the weight of came to a Judge who is better positioned testimony the advantage.

YIN v. MAI 188 I.C. 631—13 B.E. 4—A.I.R. 1940 Rang. 117.

LICENCE—Revocation—Licentee building works of permanent nature—Licensor's right to revoke licence.

In a province like the Punjab where the Easements

## LIMITATION ACT (1908).

LIFE ASSURANCE COMPANIES ACT (VI OF 1912), S. 34—Construction—Persons liable under—Same person liable holding different capacities.

S. 34 of the Life Assurance Companies Act cannot be construed as laying down that besides the company only g under any one of the specified categories shed A director of the company who nd who is also a representative of another are the managing agents of the former company, is liable under S. 34 in all the capacities held by him. (*Lakshmana Rao, J.*) PANDALAI v. EMFEROR 190 I.C. 896=51 L.W. 634=1910 M.W.N. 384=A.I.R. 1940 Mad. 760.

LIMITATION—Applicability to defences. See 1939 Dig., Col. 736. KRISHNA AIYAR v. SUBBA REDDIAR 189 I.C. 200=13 B.M. 192

—Execution—Attachment in force—Fresh appli

—Law applicable—Old or new Act.

A statute of limitation like other laws relating to

aled Act was in existence. (*Nawal and Ranjimal, J.*) TEJSSINGH v. 1940 Mar L.R. 125 (Civ.).

Limitation prior to Limitation Act,

It is incorrect to say that because the first Limitation Act was not introduced until 1877 there was no law of limitation in force in 1872

ulgment

ne of the is open nt. (*Dru* M. VIDYA L. 149= Lah 75

Applicable

allegations. See 1939 Dig., Col. 736 JAI MANGAL TEWARI v. BINDESHURI SINGH 15 Luck 157=12 E.O. 267=1940 O.L.R. 36=185 I.C. 736= A.I.R. 1940 Oudh 131

## LIMITATION ACT (1908)

are the rules in force at the date of the institution of the suit, limitation being a matter of procedure. It cannot

Courts do not enforce rights after a certain time, with the result that certain rights come to an end. It is impossible to read into the modern Limitation Act an exception for property made waqf for the mosque whether the purpose be merely to provide a site and building for the purpose of the upkeep and conduct of a mosque. The District Court made an order of the plaintiff. The plaintiff

b  
p

## LIMITATION ACT (1908) S 4

—Date of suit—Date of presentation or original presentation—Exclusion of period—Limitation Act, S 14.

On 20th October, 1929, a suit was filed in the Court of the District Judge for possession of properties by a daughter of the last male holder. The defendants disputed the valuation given by the plaintiff, and contended that the District Court had no jurisdiction to make an order of the plaintiff. The plaintiff

—Relief from operation of—Power of Court to afford

There is no judicial discretion to relieve the parties

SEETHANNA b1 L.W. 4/1=1940 M.W.N. 662-2

A.I.R. 1940 Mad 689=(1940) 1 M.L.J. 590

S 3—Institution of suit—Date of—Suit for

—Scope of—If exhaustive

The Limitation Act is an exception and effect must be given to its provisions by questions of expediency and equity. (J) RAJARAM v. PAI

I.L.R. (1940) Nag 334

S 3—Scope and meaning of

the period of 12 of the Letters of such period J) SUPROKASH 44 C.W.N. 604

Court—Limitation expiring on day of institution of suit

valued—Return for presentation to proper Court—Return to same Court after striking off certain items of property so as to make suit within jurisdiction

the lowest grade in S. 15, C.P. Code, refers subject to the Code and cannot refer to a (M. K. B. J.) SURESH RAO v. NARSIAN





## LIMITATION ACT (1908), S 10

51 L W 493=1940 M W N 368=

44 C W N 513=1940 O L R 200=

187 I C 108=71 C L J 281=6 B R 466=

12 R P C 136=1 L R (1940) K a r (P C) 109=

42 B o m L R 621=42 P L R 511=

21 P a t L T 679=1940 A W R (P C) 43 (2)=

1940 O A 217=1940 O W N 225=

A I R 1940 P C 45=(1940) 1 M L J 834 (P C)

—S 10—Inapplicability—Suit for accounts against Karta of Dayabhaga family

Section 10 of the Limitation Act is not applicable to a suit for accounts by a junior co sharer against the Karta of a joint Hindu family governed by the Dayabhaga law (*Mitter Akram, J*) *DEWY KRISHNA GHOSH v A RENDU KRISHNA GHOSH*

I L R (1940) 1 Cal 18

186 I C 546=12 R C 481=70 C L J 5;

44 C W N 93=A I R. 1940 Cal

—S 10 and Art 120—Scope of S 10—Art 120 applies

S 10 of the Limitation Act says in terms that where a suit is brought by a beneficiary against a trustee of an express trust for an account of property which has become vested in the trustee, or the proceeds of such property, the suit shall never become barred by lapse of

Such a claim is liable to be Art 120 is the Article applicable (*Dunkley J*) *OFFICIAL TRUSTEE v 1940 Rang L R 273*

—S 12—Period between decree—Deduction of—Decree signed See 1939 Dig Col 740 *SARAT CH RATHI KANTA POLLEY*, 186 I C 58

—S 12 (2) and S 5—Time required—Wrong suit number given—Delay in to suffer—Want of fund—Effect

well as the time for obtaining the copy of the appealed against (*Braumont, C J and Sri DALAPPA TAMMANNA v DYAMAPPA BHUSAPPA* 42 B o m L R 872=A I R 1940 B o m 415)

—S 12—Time requisite—Time between date of judgment and signing of decree if could be excluded

The time between the date of the judgment and the signing of the decree, can be excluded in the computation of the 'decree' and apply for a suit is immaterial. *YUSUF ALI*

15

## LIMITATION ACT (1908) S 14

making  
—Return  
Small

The plaintiff in a suit on an unregistered mortgage was amended by scoring out the relief to sell the mortgaged property. As it was then found that the valuation of the suit was within the cognizance of the Court of Small Causes, the plaintiff was returned to be presented to the proper Court and was so presented on the same day. On a question as to whether the plaintiff in such a suit could claim the benefit of S 14 of the

entitled to claim the benefit of S 14 of the Limitation Act (*Mulla, J*) *DAL SINGAR KOERI v CHANDI SINGH* 187 I C 336= 12 R A 522=1939 A W R. (H C) 875= R 1940 All 145

Limitations—Identity of Necessity—Suit for Court—Finding of sum of plaintiff for pre-rent in Revenue Agency of suit in Civil SATYANARAYANA

in if can be excluded

Where a person in ignorance of the provisions of the Agriculturists Relief Act relating to the special forum prescribed by the Act files a suit in a wrong Court and on its being returned, presents it to the proper Court, the time spent in the wrong Court can be excluded

... as security  
... of to accept  
... Judgment  
... rt—If tant  
... er"—Execu  
... 39 I g, Col.

... ILE (1940) Nag 627  
... Letter of chief Court  
... in the case of agriculturists  
... mitation

... residence was in another place—none of  
... available

Where a plaintiff files a suit on a promisor  
a Court within the jurisdiction of which the  
was employed, and where the money was borrowed and

would be entitled to exclude the time taken in prosecu

—S 14—Want of jur.  
in existence at the time of  
suit

There is nothing in the terms of S 14 of the  
Limitation Act to justify the conclusion that the  
want of jurisdiction or other cause of  
nature referred to in the section must  
existence at the very institution of the suit  
of jurisdiction or other cause of a like  
may arise at any stage of a suit or proceeding  
(Mulla, J) DAL SINGAR KOERI & CHANDI  
SINGH

1939 A W R

—S 14—Scol  
Art 182 (5)

It is wrong to t  
must be read suby  
be used to extend  
by Art 182 (5)  
provision being  
The two provisio  
Art 182 (5) pre  
nothing to do with any period of time It has only to do  
with a fixed point of time S 14 relates only to the  
method to be adopted in calculating the total time that

S 14 (2) applies to execution applications in suitable  
cases and Art. 182 cannot bar its application. The

1940 O W N 1202  
—S 15—Applicability—Sale of particular house  
attached in execution stayed—Decree holder if can

done no time can be excluded Therefore, where only  
the sale of a particular house attached in execution is  
other  
also to  
holder  
(d, J)

190 I C 379-13 B L 149-A I E 1940 Lah 75

14 Luck 694.  
raud—Burden of proof—Application to  
C P Code O 21, R 90 See 1939 Dig.  
—JL JANIL SAMSUL HAMID & ANEIA  
KHATUN 186 I C 335-12 B C 467

—Ss 19 and 4—Acknowledgment after limitation

fresh period of limitation it was held that 4 had  
nothing to do with computing the period with reference  
to an acknowledgment under S 19 of the Act and as  
—1 limits  
KAN &  
J 607.  
of pay.

rays a  
lack of  
in



making the payment. But that is not enough under S. 19 (*Stone, C.J and Bose, J.*) GAJADHAR PRASAD

A promissory note was executed by two persons, one of whom subsequently died. The other made a payment

187 IC 831 = 12 R C. 620.

After the equity of redemption had been assigned and after the mortgagees had lost their personal remedy

If upon a document which purports to be an acknowledgment of liability, there appears the name of the debtor, and that name is introduced under his authority with a view to authenticate

In order that a due regard be

1940 NLJ 445-

## LIMITATION ACT (1908), S. 19.

S. 19 (2)—Co-mortgagor—Acknowledgment by—If saves limitation for suit by other mortgagor against redeeming co-mortgagor for redemption

An acknowledgment by one of several co-mortgagors is insufficient to provide a fresh period of limitation for

debt"—"Agent duly authorised"—Meaning of—Mortgage—Purchaser from mortgagor of property not comprised in mortgage with direction to discharge mortgage debt—Part payment by—If saves limitation—Plaintiff

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uld pay

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payment of 1927 by 4th defendant and as one by J in 1935, as being a ratification by his payments by the 4th defendant

Held, (1) that the payments by the 4th

be of no avail even against defendants 1 to 3 as a father has no right to acknowledge a barred debt so as to keep it alive against his J himself, it being acts of his agent (Rahman, JJ) T RAO

S. 20—Creditor appropriating 'open' payment—Availability of S. 20—Facts to be proved.

A plaintiff wishing to avail S. 20 of Limitation Act, has in the case of an 'open' payment, to prove that he appropriated the sum towards the principal debt

## LIMITATION ACT (1908), S. 20

before the expiry of the period of limitation for a suit on the document in question. Though the writing evidencing the payment may come into existence at any time, the creditor's act of appropriation of the payment to the principal debt, is a very different matter. The language

by the creditor  
anner in which the  
reditor in his own  
books of account will ordinarily be sufficient. But if it be true that until after the expiry of the prescribed period the creditor has treated the sum as paid on account of interest or has not done anything to treat it as principal, then under the amended part payment of principal has (Sir George Rinkin.) RAMA 67 I.A. 180 = 1940 Lah 470 = 187 I.C. 233 =

g, saving of—Conditions  
ation the payment must either appropriated as such or must the person who pays does not ment is towards principal or not be saved unless possibly the nst the principal from the very ) GIRDHARI LAL v KISHORE 189 I.C. 886 = 13 R.A. 114 = C) 257 (1) = 1940 A.L.J. 332 = A.I.R. 1940 All 538

ring no interest—Part payment

amount as loan from B. An is made in B's bahu which was

as "towards interest or in part ely stated that the pay above account." no interest the payment have been made in part he fact of the part pay- on the bahu and the entry was clearly covered by KESAR SINGH v WAZIR 13 = A.I.R. 1940 Lah 442

S. 20—Part payments by debtor—Matters to be proved

was paid by the debtor, as such, the appropriation of the debtor must be shown to the payment should go towards the principal debt, ever, not necessary that the sum should be made clear at the time of payment

## LIMITATION ACT (1908), S 20

proved not only by statements made by the debtor at the time of payment but in any other manner as may clearly appear from the circumstances (2) If the debtor at the time of payment specifies that the payment

## LIMITATION ACT (1908) S 20.

v SIKRI BROS 189 IC 284=13 B.L. 73=

42 P.L.R. 103=AIR 1910 Lah 106

—S 20—Unspecified payment—Saving of limitation—Conditions necessary.

When the debtor makes a payment to be credited to an

appropriation is made before expiry of limitation. Such appropriation need not be made at once but it must be made before the limitation has expired, (c) If the

(Hamilton York and Radhakrishna, JJ) RISHI KISHEN v KRISHNA KUMAR 15 Luck 573=

189 IC 481=1940 A.W.R. (O.C.) 270=

OWN 647=1940 O.L.R. 477=13 R.O. 89=

1940 O.A. 535=AIR 1940 Oudh 340 (F.B.)

20—Unspecified payments—Appropriation interest—Creditor's right—Saving of limita

tion—Conditions

A payment not specified as being towards either principal or interest, could not be credited to interest by

made towards the principal and, therefore this payment will save limitation (5) If the debt due does not bear interest the payment again must necessarily be in part payment of the p extended under CHAND v BULF

—S 20—  
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—Ss 20 (1) and 4—Payment after limitation

1940 O.A. 766

d of limitation  
respect of his  
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respect of which  
lay of payment  
t cannot extend  
g in S 4 which  
(Pollock J)  
=13 B.N. 3=

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There is nothing in law which requires that the pay ment of interest 'as such' referred to in S 20 of the Limitation Act, must necessarily appear in the hand writing of or under the signature of the party making the payments. It is no doubt necessary that it must be

1910 M.L.J. 241=A.I.R. 1940 Nag 401.  
—S 20 (1)—Principal and surety—Payments by principal—Effect of against surety—Implied authority of principal to make payments

In cases of principal and surety there are two distinct

—S 20—Unspecified payment by debtor—Appropriation by creditor towards principal—Effect of

finally adjusted, and will not be affected by any fur bearance or arrangement for giving time to or other

## LIMITATION ACT (1908), S 20

—, as amended in 1929, S 20 (1), Proviso—  
*Applicability to S 20 (2)*

The proviso to S 20 (1) of the Limitation Act, inserted by the Amending Act of 1929, applies to sub-S (1) and does not apply to sub-S (2) of S 20. It cannot be said that the proviso applies to the whole section. (*Rowland and Chatterji, J.J.*) MATHURA SINGH v PALAKUHARI RAI

6 B.E. 477=187 I.C. 484=12 B.P. 598=21 Pat L.T. 770=A.I.R. 1940 Pat 512

—S 20, Proviso—*Scope of Acknowledgment, when could be made*

The words before the expiration of the prescribed period which occur in the first and second clauses of S 20 of the Limitation Act, do not appear in the pro-

knowledge referred to in the proviso should also have

the usufruct by him year after year cannot give a fresh start of limitation for a suit on the mortgage. (*wala and Rowland, J.J.*) MAKSUDAN LA NIRANJAN NATH DAS 19 Pat 507=18

12 B.P. 575=21 Pat L.T. 219=6

A.I.R. 1940 Pat 512

rents and profits by mortgagee—If payment and if saves limitation for final decree—Preliminary decree—If satisfied by receipt of rents and profits—C.P. Code, O 34 R 5.

Where a mortgagee who has obtained a preliminary

and receives the rents and profits thereof as a mortgagee but not where he is in possession and receives the rents and profits in his own absolute right as the owner of the property under his purchase as against the mortgagor. Nor can the preliminary decree be deemed to have been

mortgage decree Further where the mortgagee's

## LIMITATION ACT (1908), S 22

tion of his attachment. Hence there can be no satisfaction of the decree so as to stop the running of time. (*Patanjali Sastri, J.*) PERIA KARUPPAN CHETTIAR v DURAISWAMY NAICKEN 51 L.W. 191=

1940 M.W.N. 602=A.I.R. 1940 Mad 461= (1940) 1 M.L.J. 134

—S 21 (1)—Hindu Law—Paternal grandmother—If lawful guardian—Endorsement by—If saves limitation

ONKAI

and his sister.

curred by co mortgagors, they are joint contractors

er and sister were co mortgagors by the brother, a pay-

behalf of the sister could be fact of relationship

(J.) EUSOOF KARWA v. 1940 Bang L.R. 603

ability—Conditions See UR CHAND TEWARI v.

186 I.C. 891= 19=A.I.R. 1940 Cal 137.

Party implicated on his application

A.I.R. 1940 Lah 262

minor, C.P.

1940 U.W.N. 1007.

—S 22—Applicability—Suit on pronote by wrong plaintiff—Substitution of real plaintiff after limitation

—Suit if barred

Where a wrong person sues on a pronote and after the period of limitation on the right person is substituted,

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—Suit decreed against all defendants—Dismissal of suit on appeal by such legal representatives—If invalidly dismissed as against non-appealing defendants also

Where a mortgagee institutes a suit against the father

the legal representatives of the deceased mortgagor

also Dismissal representatives

## LIMITATION ACT (1908), Art. 29.

—Art 29 and S 23—*Applicability of Art. 29—Wrongful attachment in execution of stranger's property—Suit for damages—Seizure, if a continuing wrong.*

Where in the execution of a decree against the judgment debtor, the decree holder wrongfully attaches

nothing more, the judgment-creditor has no duty,

under cultivation—Suit for its recovery. See 1939 Dig., Col. 759. LACHMAN MAHTO v SHANKAR MAHTON

21 Pat LT 109=A I R 1940 Pat 106

—Art 44—*Applicability—Manager described as de facto guardian.*

Art 44 refers to the relationship of guardian and

—Art 44—*Applicability—Minor jointly with de facto creditor as guardian—Recital and that consideration was for duty of sale.* See 1939 Dig., SANGANEASAPPA

186 I U 250=12 R B 306

—Art 44 and S 28—*Failure of ward to sue with-*

KUMAR DAS v. NOGENDRA LAL DAS

A I R 1940 Cal 580

—Art. 44—*Scope of—Minor, as defendant, if can challenge a transfer.*

It is open to the minor as defendant to challenge the transfer of property made by his guardian. It will be no bar to such a defence. That the remedy of the plaintiff to get the title set aside is not fatal to his title. (Small a)

JAGANNATH PRASAD v. CHUNNI LAL

I L R. (1940) All 580=1940 A.W.R. (H U) 468=

1940 A L J 511=A I R 1940 All 416

—Art. 52—*Applicability—Goods sold and delivered and moneys received on account on various dates—Suit for balance—Cause of action—Limitation—Starting point.*

## LIMITATION ACT (1908), Art. 60.

of time was the date of delivery, and although the cause of action was one for the price of all goods delivered the Court was bound to check the various items which constituted that cause of action and to apply Art. 52 to deliveries made more than three years before the filing of the suit, and (4) that therefore the plaintiff's claim to

—Arts 52 and 85—*Applicability—Sale of goods*

very after death of banker—*Limitation—Claim for interest—If subject to same limitation.*

Where money is deposited by a customer with a banker the death of the banker does not change the character of the deposit. It cannot be said that

by way original become make the case

falls within Art. 44, 40 & 40 of the Contract Act, and

it is a single cause of action, and when the claim is a single claim for principal and interest, there cannot be

—Test.

In order to determine whether a bailment of a certain sum of money is a deposit for safe custody or a loan, the test to be applied is whether the bailee is to keep the

because the respondent had asked for them, and further there was no security, no receipt in writing, no promise sory note and no agreement as to rate of interest.

Held, that the moneys were simply held by the appellant for safe custody and that he was really acting as a Banker for the respondent and that, therefore, a suit by the respondent for the recovery of the moneys was governed by Art. 60 of the Limitation Act. (Sir Philip Macdonell.) SULEMAN HAJI AHMED UMAR v. HAJI ABDULLA. 189 I C 444=52 L W. 388=

13 E P O 85=1940 A L J 612=

1940 A W R (P O) 138=

42 Bom L R 971=1940 M.W.N. 1000=

1940 O L R 494=1940 O W N. 778=

1940 P.W.N. 715=8 E R 852=1940 O A 784=

44 C.W.N. 1041=A I R, 1940 P.O. 132 (P.O.).

**LIMITATION ACT (1908), S 20**

—(as amended in 1929), S 20 (1), Proviso—  
*Applicability to S 20 (2)*

The proviso to S 20 (1) of the Limitation Act inserted by the Amending Act of 1929, applies to S (1) and does not apply to sub-S. (2) of S 20 cannot be said that the proviso applies to the w section (*Rowland and Chatterji, JJ*) **MATHURA SINGH v. PALAKDHARI RAI**

6 B.R. 477=187 I.O. 484=12 R.P. 598=21 Pat L.T. 770=A.I.R. 1940 Pat 512

—S 20 Proviso—*S. ope of Acknowledgment, when made*

The words before the expiration of the prescribed period which occur in the first and second clauses of S 20 of the Limitation Act, do not appear in the pro

knowledge referred to in the proviso should also have

1940 O.W.N. 166=A.I.R. 194

—S 20 (2)—*Applicability—Possession mortgage—Receipt of rents and profits—If tion for suit*

The enjoyment of the usufruct of the person in possession under a void mortgage mortgagee but as a trespasser, and such the usufruct by him year after year cannot give a fresh start of limitation for a suit on the mort *wala and Rowland, JJ*) **MAKSUDAN 1 NIRANJAN NATH DAS 19 Pat 507=12 R.P. 575=21 Pat L.T. 219=**

—S 20 (2)—*Applicability—Preliminary decree in mortgage suit—Subsequent attachment of mortgaged property in execution of money decree of another creditor—Private sale by mortgagor to mortgagee—Receipt of rents and profits by mortgagee—If payment and if saves limitation for final de rec—Preliminary decree—If satisfied by receipt of rents and profits—C.P. Code, O 34, R 5*

Where a mortgagee who has obtained a preliminary

but not where he is in possession and receives the rents and profits in his own absolute right as the owner of the property under his purchase as against the mortgagor. Nor can the preliminary decree be deemed to have been satisfied by the private purchase from the mortgagor so as to stop the running of time, because O 34, R 5 recognises only one method of payment, namely, payment into Court of the amount fixed by the preliminary mortgage decree. Further, where the mortgagee's private purchase is made pending an attachment of the property in execution of a money decree obtained by another person, it is subject to the infirmity of being liable under S 64, C.P. Code, to be superseded by the attaching creditor bringing the property to sale in execu

**LIMITATION ACT (1908), S 22**

tion of his attachment. Hence there can be no satisfaction of the decree so as to stop the running of time

—S 21 (1)—Hindu Law—Paternal grandmother—If 'lawful' guardian—Endorsement by—If saves limitation  
**ONKAR 1**

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and sister—Payment by brother—If on behalf of his sister

curred by co mortgagors, they are joint contractors rother and sister were co mort made by the brother, a pay

application

A.I.R. 1940 Lab 202  
—S 22—*Applicability—Suit by plaintiff as minor while in fact he was major—Amendment. See C.P. Code, O 1, R 10 AND LIMITATION ACT, S 22*

1940 O.W.N. 1007,  
—S 22—*Applicability—Suit on pronote by wrong plaintiff—Substitution of real plaintiff after limitation—Suit if barred*

Where a wrong person sues on a pronote and after

suit on appeal by such legal representatives—If in volens dismissal as against non appealing defendants also

Where a mortgagee institutes a suit against the father of the legal representatives of the deceased mortgagor and it is found that he could not be legal representative of the deceased, the property having been gifted to be sons by the mortgagor, the mortgagee cannot implead the legal representatives of the deceased mortgagor after the expiry of the period of limitation. If of the suit on appeal by such legal representatives the dismissal of the suit against them defendants also especially where the party is not in their possession or

## LIMITATION ACT (1908), S 22

decree appealed from pertains to the same party alone 69 P R 1902 and Rel on (*Dein Mohammad, J*)  
RAM

—S 22 (1)—*Applicability—Suit for redemption—Defendant impleaded in personal capacity—Amendment after limitation for permission to sue him ing unincorporated association—Effect of of fresh parties—Limitation*

An amendment the effect of which is large number of fresh parties to the suit special procedure one of their number who be already on record in his personal capacity is treated on is essen and when is barred A suit was instituted against the 1st defendant in his personal capacity to redeem a *hanom*. After the period of limitation for suit had expired the plaintiff applied for an amendment of him to sue the 1st defendant as tion (unincorporated) of which objection was taken and it was

*Held*, that the effect of the

which a person already on the record was by means of an amendment impleaded in another capacity or other

*right of way—Public right and private way—Distinction—Perpetual right of suit—If exists—Trespass—When continuing wrong—Test*

the sense that it is not abandoned, the wrong is continuous and S 23 of the Limitation Act gives rise

struction does not amount to dispossession of the plaintiff either because it is not on the plaintiff's land or because the plaintiff himself has only a right of easement, as in the case of rights of way of villa nating in custom. In such cases even wrong be a continuing wrong there would be of action after 20 years (or 60 years in

## LIMITATION ACT (1908), S 23.

opened is one of the to be a perhaps for compensation for the last injury suffered while the act

—S 23—*Applicability—Continuing wrong—Chabutra erected on public ahar—Suit after expiry of 12 years for removal—Maintainability—Erection—If continuing wrong*

A trespass or nuisance, such as the building of a *chabutra* on a public *ahar* recorded as *gairmazana-am*, may or may not be a continuing wrong. If the act com

title to has been extinction To such

a case S 23 of the Limitation Act has no application, because S 23 would cease to have operation the moment

MALI 19 Pat 852

—S 23 and Art 120—*'Continuing wrong'—Test—Encroachment by joint owner by building chabutra*

of action to the person injured arises once and for all at the time when the injury is inflicted and the fact that the aggrieved person ntly or even continue 'continuing wrong' action on each such such that the injury 'continuing wrong' In the case of a and a fresh cause of period during which the act complained of plaintiff the injury is To such cases S 23

does not apply. An encroachment made by a joint owner by building a *chabutra* on land reserved for common purposes claim ing it as his own does not constitute complete at the time the out for injunction is 23 (*Tik Chand*)

**LIMITATION ACT (1908), S 23.**

*Bhude and Din Mahomed, JJ*) KHAI MAHOMED  
KHAN v. MT. JANNET. 191 IC 42=

A I.R. 1940 Lah. 359 (F.B.)

—S. 23—Continuing wrong—Wrongful seizure in execution of stranger's property—If amounts to See LIMITATION ACT, ART. 29 AND S.

A I.R. 1941

—S. 23—Dissolution of Mat  
Suit for, on ground of impotency  
1939 Dig, Col 754 MT. SAH  
GHAFOOR. 185 IC

LIMITATION—Suiting, p. 100  
TENANCY ACT, S 233

—S. 28—Applicability to  
Provinces—Extinguishment under

S 23 of the Limitation Act has b  
applicable to tenancies in the Central Provinces by S  
104 (4) of the Central Provinces Tenancy Act. In the  
case of tenancies under the Central Provinces Tenancy

**LIMITATION ACT (1908), Art 28**

—Art 11—Applicability—Person not party to  
order.

Art 11 of the Limitation Act does not apply as  
against a person who was not a party to the proceedings  
in which the order sought to be set aside was made

Code—If amounts to dispossession in  
757

—Applicability—Order of Bench of  
S 110, Bombay Municipal Boroughs  
—Suit in Civil Court to determine

orders  
e any  
The  
110 of  
order  
der of  
er and  
4 does

y to such all other. (Lalwala, J.)  
V BHAT 188 IC 531=  
12 B B 510-42 Bom.L.R. 223=  
A I.R. 1937-1938

—Art 11—Applicability—Attas  
ties in execution—Claim petition by  
for an order for sale subject to his mortgage—Order

which is a nullity.  
Government in his  
the law, which  
within his power  
aside an order of  
imposing penalty

1. Code. If the order is not nullity, the  
Limitation Act can have no application. Certain  
ties were attached in execution of a decree, a  
preferred by a mortgagee of those properties from the

—Art 14—Applicability to

7 B B. 4-100 IC. 517.

—Art. 28—Applicability—Illegal distress—Suit  
for damages and compensation—Distress without  
dictation—If excluded from operation of article—

—Application of—General and specific  
Exclusion of former by latter—Rule See  
Col 759 SHRIDHAR MAHADEO v  
MAL. I.L.R. (1939) Bom. 721-185  
12 B B. 345-A.I.E.

Held, that the order was not an order against the  
claimant mortgagee as it was not an order of dismissal  
and since it did not fall within the purview of O 21, R.  
63, C. P. Code Art 11 of the Limitation Act would not  
apply to a suit by the mortgagee on his mortgage  
(Lalwala, C.J. and Krishna Rao JJ) CO-  
OPERATIVE CREDIT SOCIETY, KAIKARAN v NARA-  
SIMHA RAO. 1940 M W N 893-52 L W 354=  
(1940) 2 M.L.J.



## LIMITATION ACT (1908), Art. 29.

—Art 29 and S 23—*Applicability of Art. 29—If wrongful attachment in execution of stranger's property—Suit for damages—Seizure, if a continuing wrong.*

Where in the execution of a decree against a judgment debtor, the decree holder wrongfully attached property belonging to a stranger, the suit by the stranger for compensation for the loss of the property is not barred by Art. 29. Such wrongful attachment is a continuing wrong within the meaning of the statute from the date of seizure to the date of delivery of the property to the owner. The judgment-creditor has no duty, if

## LIMITATION ACT (1908), Art. 60.

of time was the date of delivery, and although the cause of action was one for the price of all goods delivered, the Court was bound to check the various items which were included in the bill of lading.

—Arts 52 and 85—*Applicability—Sale of goods*

de facto guardian.

Art. 44 refers to the relationship of guardian and ward. A man who is not a guardian within the meaning of the statute is not a guardian for the purposes of Art. 44. (Henderson, J.)

NOGENDRA L.

—Art 44 and S 28—*Failure of ward to sue within the time prescribed does not extinguish the right to the property under S. 24.* (Henderson, J.)

SANGANBASAPPA 188 I.O. 235 = 12 A.D. 1900

—Art 44 and S 28—*Failure of ward to sue within the time prescribed does not extinguish the right to the property under S. 24.* (Henderson, J.)

KUMAR DAS v. NOGENDRA LAL DAS

A.I.R. 1940 Cal 589

—Art. 44—*Scope of—Minor, as defendant, if can challenge a transfer.*

It is open to the minor to challenge a transfer of property made by his guardian within the time prescribed does not extinguish the right to the property under S. 24. (Henderson, J.)

JAGANNATH PRASAD v. CHANDERJI

I.L.R. (1910) All. 580 = 1910 A.L.J. 5

—Art. 52—*Scope of—Money, as defendant, if can challenge a transfer.*

It is open to the minor to challenge a transfer of property made by his guardian within the time prescribed does not extinguish the right to the property under S. 24. (Henderson, J.)

JAGANNATH PRASAD v. CHANDERJI

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JAGANNATH PRASAD v. CHANDERJI

I.L.R. (1910) All. 580 = 1910 A.L.J. 5

very after death of banker—*Limitation—Claim for interest—If subject to same limitation.*

Where money is deposited by a customer with a banker, the death of the banker does not change the character of the deposit. It cannot be said that the deposit is a loan.

—Art. 60—*Basement of money—If deposit or loan—Test.*

In order to determine whether a basement of a certain sum of money is a deposit for interest or a loan, the character of the transaction is to be ascertained.

It is a single cause of action, and when the claim is a single claim for principal and interest, there cannot be two causes of action.

The claim for interest is a separate claim.

(Roulston and Chatterji v. Bank of India)

188 I.O. 337 = 12 R.P. 351 = 1940 Comp. O. 61 =

A.I.R. 1940 Pat. 129.

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(Roulston and Chatterji v. Bank of India)

## LIMITATION ACT (1908), Art 60

—Art. 60—Deposit—Suit for recovery—Demand—Necessity—Waiver of demand—Repudiation of liability by banker—Effect of.

In the case of money deposited with a banker, there must ordinarily be a demand or something that can be deemed equivalent to a demand or take the place of a demand as part of the action for a demand under Art 60 of the Limitation Act for a demand may, however, be got contract or waiver. A repudiation by the customer's right to be paid any particular a waiver of any demand in respect of defendant banker cannot simultaneously repudiate liability to pay the amount and insist that a demand previous to suit is essential to its maintainability (*Rowland and Chatterji, JJ*) NRIPENDRA NATH

cate—Stamps purchased and paid for by one of two joint purchasers—Suit for contribution—Limitation

The petitioner spent the amount for purchase of stamps for a sale certificate issued in respect of properties jointly purchased by the petitioner and defendant. The stamps were purchased on

## LIMITATION ACT (1908), Art 64-A

A suit barred by the limitation act cannot be brought

totalled up and balance struck in pencil in the handwriting of the defendant

J) KANTHASAMI REDDIAR v PETHUSAMI REDDIAR, 1940 M.W.N 882=A.I.R. 1940 Mad 887= (1940) 2 M.L.J. 334.

—Arts. 64 and 85—Principal and agent—Accounts—Nature—Mutual, open and current accounts—Account stated—Suit on—Limitation—Starting point

Cases of transactions between a creditor and his debtor must be distinguished from those of a principal and agent. Where the whole basis of the relation between the parties is that of principal

to be a settled account, provided that it is submitted he made liable on it, and he conduct, acquiesced in its account is stated between either of them is to bring it to have accounts taken been stated, the party in a credit balance has the balance due to him. As agent, the obligation of the rendering of also the payment of any be found due on taking

—Arts. 62 and 120—Suits—Article applicable. See ARTS. 120 AND 62. I.L.I.

—Art 63—Applicability—Deposit with banker—Death of banker—Claim to recover money and interest from heirs of banker—Claim for interest—Limitation—If different from that for principal. See LIMITATION ACT, ARTS. 59 AND 60. 6 B.R. 155.

—Art 64 and S 19—Account stated—and acknowledgment—Distinction between. See BHOPAL LIMITATION ACT, ART. 57 & S 19. 189 I.C. 802.

—Art. 61—Account stated—Meaning of—Some of the items time-barred—Effect. See BHOPAL LIMITATION ACT, ART. 57. 189 I.C. 802.

—Art 61—Account stated—Requisites. See 1938 Dig., Col

—Art 61—Account stated—Requisites—If a statement of account "stated" by the defendant is sufficient for purposes of Art. 61

1940 P.W.N. 28=21 Pat.L.T. 41=A.I.R. 1940 Pat. 71.

—Art. 64—Suit for accounts by some co-sharers—Addition of other co-sharers after limitation—Suit, if in time as regards all.

In a suit for accounts one co-sharer operates as an agent for all. If the cause of action arose within the three year limitation period before the institution of the suit, then the suit will be in time so far as all the co-sharers are concerned, even if some of them are added after the three year period has expired. (*District*) SHER MOHAMMAD v. AHMADULLAH RAHMAN.

1940 A.M.L.J. 12

—(as amended in 1928) Art. 64-A—If retrospective—Suit barred before amendment—If revived by amendment. See 1937 Dig., Col 763, KARNA GULAN v. FERHAN PUSHTAI & CO

185 I.C. 149-12

**LIMITATION ACT (1908), Art 73**

—Art 73—Promissory note—Endorsement—Suit against endorser—Limitation—Starting point See 1939 Dig Col 763 MOOSAN KUNHI KALANDAN & KUNHI KATTYALI AIR 1940 Mad 85

—Art 75—Instalment bond—Default clause—Acceptance of overdue instalment—If amounts to waiver

therefore, run against the whole amount from the date on which that instalment was due (*Khan, C J and Birdie, J*) MADAN MOHANLAL v ZAHIRUDDIN 187 IC 809

—Art 75—Instalment bond—Default clause—Failure to pay several instalments—Time, when begins to run against whole amount

If an instalment bond for contains a provision that in the instalment the creditor shall have whole amount thereunder and several instalments time will of the instalments against the creditor is not entitled to for

and *Faiz Asim J J*) KANAYYALAL v ZALIM SINGH 187 IC 221

—Art. 75—Instalment bond—Waiver of option to recover whole amount in case of default—Tendency of

Where a major portion of the sale consideration is left with the vendee for payment to the various creditors of the vendor and the vendee commits default, a suit by the vendor against the vendee for loss occasioned

**LIMITATION ACT (1908), Art 96**

of borrowings from the plaintiff the balance went against them it was held that it was an open, current and mutual account (*Rachpal Singh, J*) MANSA RAM & SONS v HIRA LAL SANON 1 LR (1940) All 147 = 190 IC 356 = 13 RA 182 = 1940 A LJ 51 = 1940 A WR (HC) 55 = AIR 1940 All 209

—Art. 85—Mutual, open and current account—Principal and agent—Agent—Suit on—Starting point of Limitation Act, Arts 64 and 6 BR 82.

mutual, current and open account—contractual relations and reciprocal demands See 1939 Dig, Col 765 RULDU RAM DAULAT RAM & BASANT RAM 185 IC 805 = 12 EL 321.

—Art 89—Suit to recover money collected by agent—Starting point—Agency revoked by letter See 1939 Dig, Col 766 RAM CHANDER & RURE 105 IC 293 = 12 RA 316.

—Art 91—Applicability—Deed—Execution by illiterate person on misrepresentation as to real nature of the deed—If void or voidable—Suit to declare void—Prayer to set aside or cancel—If necessary

Obiter—If a person who is illiterate executes a document under the impression that it is a lease when in fact it is not a lease [on a misrepresentation that it is a lease there is no real execution, since the executant's character and Avolly void imitation

—Art 95—Applicability—Decree against major wrongly describing and treating him as minor—If nullity—Suit to set aside—Limitation

## LIMITATION ACT (1908), Art. 97.

—Arts 97 and 116—Applicability—Registered lease with possession—Subsequent dispossession—Suit for return of premium and costs and damages on ground of want of title in lessor—Limitation—Starting point  
See 1939 Dig. Col 767. DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN. 186 I.C. 674 =

12 R.P. 522 = 6 B.E. 385 = A.I.R. 1940 Pat. 81.

—Art 98—respect of breach  
falcated money in  
D.g., Col 933  
BALLABHJI MAH

—Art 98—933. SAHAUDR LABHJI MANDIF

—Art. 95  
payment—*What*  
The question  
Art 99, Limita  
mined with ref  
case No rigid formula can be safely laid down  
J.M. held a joint decree for rent against the  
plaintiff and defendants, and in execution of that

amount of his decree out of the amount in deposit  
On 20th August 1912 the executing Court made

the plaintiff against the defendant,  
Held, that the payment to the decree-holder,  
J.M. could not be deemed to have been made  
prior to 3rd September, 1932, and that time for  
the plaintiff could not run against the  
plain  
broug  
there  
J.)

enforce—Article applicable  
Where a mortgagor covenants to deliver possession to  
the mortgagee before a certain date and to pay rent at  
a certain rate till then and fails to do so and the mort  
gagor sues for possession and compensation the suit is  
governed by Art 116 and not by Art 109, Limitation  
Act and it would be within time if brought within 6  
years from the date fixed for delivering possession, when  
the breach occurred. As it could not be said that the

(Thames, C.J. and Bennett, J.) DAULAT RAM v.  
RAGHIB SAHAJ 190 I.C. 721 =

1910 O.L.R. 623 = 1910 O.W.N. 875 =

1910 O.A. 840 = 1910 R.D. 424 =

1910 A.W.R. (C.C.) 393.

## LIMITATION ACT (1908), Art. 116.

—Art. 110—Applicability—Suit for royalty in  
respect of coal mine—Lease not mentioning time for  
payment—Limitation—Starting point—Royalty—If  
rent—Contract Act, S. 46

Under S. 46 of the Contract Act, where no time is  
fixed for the performance of a contract a reasonable  
time must be allowed for its performance. Where money  
has to be paid under a contract which does not

Articles creating liability to pay in spite of forfeiture  
Where the articles of association of a company  
provide that a person shall continue to be liable for the  
money though his share is  
shareholder on forfeiture  
company, and all that is  
y all monies which at the  
payable by him to the com  
pany in respect of his shares. Hence the starting point

Arts 116 and 110 Applicability—Registered  
assignment of mortgage decree—Part consideration left  
with assignee to be paid to assignor on realization of  
decree—Suit for—Limitation—If suit for specific per  
formance See 1939 Dig. Col 769. SHEONARAIN

10 Pat. 155.

contract of

100.

contract of

—Arts 115 and 120—Applicability—Suit for  
assessment of fair and equitable rent and compensation  
for use and occupation of land.

In a suit for assessment of a fair and equitable rent  
and compensation for use and occupation of land where  
the tenants are willing to pay a reasonable rent and  
dispute only the figure at which a reasonable rent  
should be fixed, it cannot be said that the tenants are

reasona

ply to the

Art. 120.

ARANDI.

1901 O. 631 = A.I.R. 1940 Cal. 400.

—Art. 116—Applicability—Covenant in mortgage  
to deliver possession and pay rent L7 there—Suit to  
enforce. See LIMITATION ACT, ARTS. 109 AND 1

1910 "

LIMITATION ACT (1908) Art 116

—Art 116—Applicability—Enforcement of personal covenant in registered mortgage

Where a personal covenant to pay is contained in a registered mortgage it being in writing registered the relevant Article is 116 of the Limitation Act which provides for a period of six years and a suit for its enforcement would be within time if brought at any time within that period (*W R Jayakar*) NISAR AHMAD KHAN

—Date of payment fixed in bond—Suit on—Limitation—Starting point

LIMITATION ACT (1908), Art 120

JAISURHLAL v MAHOMED HUSEIN  
ILR (1939) Bom 639 = 186 IC 393 = 12 RB 331

—Arts. 120 and 123—Applicability—Annuity under will—Application for recovery—Limitation See SUCCESSION ACT S 302 185 IC 626 = 6 BE 224

—Art 120—Applicability—Co sharers—Exclusive one—Suit by others for See CO SHARERS—COM 21 Pat LT 854  
—Interference with performance of duties of officeholder—Suit by holder for injunction to restrain interference—Limitation—Re

Failure by mortgagee to pay peshkuh—Payment by

rights of the Art 120 and not to sue

—Art 116—Principal agreement by agent to repay provided within a month of it principal to recover misappropriation

Where an agent has an agreement to repay the a

—Suit for administration by

six years—Execution of decree barred under law of foreign State—Effect on suit See 1939 Dig Col 770 —Arts 120 and 116—Applicability—assessment of fair and equitable rent and compensation

**LIMITATION ACT (1908), Art. 120.**

for use and occupat  
ACT, ARTS 115 AN  
Arts 120 a

though movable of a deceased person is governed by  
Art. 120 (*Bhida and Din Mahomed, J.J.*) SHARIFA  
PEGAM? COURT OF WARDS

Art. 120—Applicability—Suit by shareholder of  
company for dividend—Limitation. See LIMITATION  
ACT, ART 116 42 Bom LR E

against  
When  
MANAGER—ACCOUNTS

Art 120—Declaratory suit—Cause of  
Plaintiff in possession

A suit which is in its essence one for a declaration of  
the plaintiff's occupancy rights in a certain land is  
governed by Art 120 of the Limitation Act. If the

42 P.L.R. 180—A.I.R. 1940 Lah 154

Art 120—Declaratory suit—Cause of action—  
Plaintiff in possession of property See 1939 Dig,  
Col 771 MAHOMED BIBI v SHAHABUDDIN.

I.L.R. (1940) Lah 180—42 P.L.R. 702

Art 120—Record of rights—Declaratory suit—  
Starting point of limitation—Mutation order—Subse-  
quent denial of right—Fresh start

plaintiff and a decree for profits is also subsequently ob-  
tained by the defendant, a suit by the plaintiff for a  
declaration that the defendant had no right to any  
share in the land in question and that the decree for

Art. 120—Right to sue—Plaintiff in possession  
suing for declaration of title—Refusal of defendant

**LIMITATION ACT (1908), Art. 126**

to a right to sue. (*Collister, J.*)  
1940 A.L.J. 459—  
(H.O.) 381—A.I.R. 1940 All. 424.  
id 62—Suit for accounts—Co-owners

one co-owner and another  
not by Art. 62 of the  
and Roxburgh, J.J.) ABU  
BOBHASH.

Cal 110=189 I.C. 642=  
13 R.O. 95—A.I.R. 1940 Cal. 363.

Art 120—Suit for injunction—Encroachment by  
joint owner by building chabutra on common land—  
Limitation See LIMITATION ACT, S. 23 AND ART.  
120 A.I.R. 1940 Lah. 359.

Art. 123 and 144—Applicability—Suit by co-  
heir for recovery of his share in property.

As between co heirs the possession of one is *prima*  
consequently the  
recovery of his  
144 and not by  
J.J.) BHOLA

NATH BANERJI v SARBAMANGALA DEBI.  
186 I.C. 843—12 R.O. 525=  
44 C.W.N. 221—A.I.R. 1940 Cal. 93.

Art 123—Scope—Persons liable to pay legacy—  
If should be executors or administrators

The words "payable" and "deliverable" in Col 3 of  
Art 123 indicate that there must be some person who is  
under a duty to pay the legacy or to deliver the distribu-  
tive shares. It is not necessary however that the persons

(*Herjee and Roxburgh, J.J.*) BHOLA NATH BANERJI v.  
SARBAMANGALA DEBI 186 I.C. 843—12 R.O. 525=  
44 C.W.N. 221—A.I.R. 1940 Cal. 93.

Art. 121—Applicability—Religious endowment

tion between a claim to an office and a claim to the  
property of an endowment (*Collister and Baspal, J.J.*)

**LIMITATION ACT (1908), Art. 131**

by limitation if instituted more than 12 years after the

**LIMITATION ACT (1908), Art 142**

of the mortgagor (grandsons of the founder) to recover

*in presence of landlord—Suit for rent more than 12 years later—If barred—Starting point of limitation—Demand and refusal—Necessity*

Where in a rent suit filed by a landlord against his

*v* LAKSHMINARASIMHALU CHETTI

1940 M W N 907 = A I R 1940 Mad 920 =  
(1940) 2 M L J 409

—Art 134—Trust property leased by trustees

barred by limitation It is not necessary under Art 131 that there should be a demand and a refusal before limitation begins to run (*Fazl Ali and Meredith, JJ*)  
JAGANNATH KISHORE LAL *v* BIPAN MAHTO

190 I C 810 = 7 B E 43 = 21 Pat L T 838

appointor under a deed of trust, and as he was the lessor he must be deemed to have had knowledge of the transfer contemporaneously with the execution of the deed Therefore a suit by him or his successor to set aside the lease after twelve years from its execution

**disputed money**

A suit by a principal to enforce a charge on immovable property created by an agent to secure moneys

—Arts 131 B and 144—Applicability—Inam grant burdened with service of Acharia purusha in temple—Usufructuary mortgage—Suit by successor to declare void—Limitation See GRANT—CONSTRUCTION  
1940 M W N 404

—Art 139—Tenancy for fixed term—Suit by

at a fixed term, a suit by all be barred by limitation Act if brought more of the term of the lease, relationship of landlord and

(*Tek Chand and Dalip*

*sequent mortgage by heir of settlor—Decree—Transfer of the property in discharge of—Suit by sons of mortgagor to recover possession from transferee—L*

—Starting point  
Where there is a complete divestiture by real absolute dedication of properties for religious the subsequent misapplication of the income donor or settlor would not affect its validity and reversion

Singh, JJ) BANWARI LAL *v* MST HUSSAINI  
42 P L R 535 = A I R 1940 Lah 410

—Arts 141 and 144—Applicability—Property of widow held by widow—Nearest reversioner taking no oath of widow—Son of such reversioner in occupation prior to widow's death continuing in possession—by other sons of reversioner more than 12 years

lants filed a suit and got a decree on 7-3-1924 On 11-10-1924 the mortgaged properties were conveyed to the appellants in satisfaction of the mortgage decree The appellants were not aware of the fact that there had been any dedication of the properties for religious purposes. In a suit filed in 1934 by the minor sons

disposition—Dispossession—When involved—Adverse possession—Defendant's duty to prove—Suit for possession on ground of dispossession.

## LIMITATION ACT (1908) Art 142

## LIMITATION ACT (1908) Art 142

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but if  
adverse  
in order  
Lobo J  
I

## —Art 142—Applicability—Burden of proof

Where the plaintiff sues for possession alleging disposssession Art 142 of the Limitation Act applies and the plaintiff must prove his possession within 12 years of the institution of the suit (*Tek Chand and Abdul Rashid JJ*) NAGINA SINGH v MUNICIPAL COMMITTEE BANGA 42 P L R 531

—Arts 142 and 144—Applicability—Dispossession—Dispossession—Meaning of dispossession of Chur—If can be dispossession See 1939 D G Col v NAWAB KHAIJAH HABIBULLA 185 I C 714—12 R C 404

—Art 142—Applicability—If confined to suits based on possessory title—If distinct from proprietary title—Burden of proof—Rule as to—Duty of defendant to prove adverse possession

physical possession at time of submergence—Constructive possession—Principle of

Where a plaintiff sues to recover possession of lands as re-format on *in situ* alleging that he has been dispossessed from them the burden lies on him under Art 142 of the Limitation Act to prove that he was in possession within twelve years of the suit. He can discharge this

above water within twelve years of the suit, or if they had appeared earlier that they had become first fit for user within that period. The fact that he had no physical possession at the time of the last submergence is not material for the purpose of enabling him to call to his aid the principle

ceases and the possession of the

I L R 12

—Art 142—dispossession—Sale in possession—Burden of proof—Proof of title—Subsidiary

A plaintiff who is suing for possession of property in the occupation of another cannot rest his case on title alone. He must show that he has exercised rights of ownership by being in possession within 12 years of suit. A plaintiff suing as a purchaser at a Court auction sale held in execution of a mortgage decree is not outside Art 142 of the Limitation Act. Plaintiff purchased the suit property at a sale in execution of a mortgage decree. In 1931 he brought a suit for possession against the first defendant who claimed to be in adverse

DHAR CHOWDHURY v SARAT CHANDRA

44 C W N 935

—Art. 142—Onus

A purchaser of a tenure in a certificate sale sued for khas possession of the lands thereof on the definite allegation that he obtained possession but was dispossessed by the defendant. This was denied by the defendant who maintained that they had been in possession as tenants under the plaintiff's predecessors in title. It had continued in possession ever since.

Held, that the onus lay on the plaintiff to prove that he and his predecessors were in khas



## LIMITATION ACT (1908), Art 142

12 years prior to the institution of the suit and that it was not necessary for the defendants to prove tenancy right by adverse possession for 12 years. *(See AIR 1940 Bom 225)*  
J) JINATULLA

## —Art 142—Proof of possession—Waste lands

In a suit relating to waste lands which falls under Art 142 of the Limitation Act it must be determined whether having regard to the evidence as to the nature of the lands and the possession the plaintiff has been able to establish actual or constructive possession within the statutory period. *(Mukerjee)*  
DEWAN APTABUR RAJA CHOL  
SANNA RAY 70 O L J 534

## —Art 142—Scope and

possessory and proprietary title

Art 142 See 1939 Dig Co

TEWARI v BINDESHURI SINGH

15 Luck 157—12 R O 257—1910 O L R 36—

185 I C 736—A I R 1940 Oudh 134

## —Art 142—Suit governed by—Facts to be proved

by plaintiff

In a

applies

their title

whether

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## —Art 144—Adverse possession—Continuity of

possession &

would be bar

A true owner

continuous adverse

that of two co

claim under

BAHADUR S

185

## —Art

Equity of

manager of joint family—Provision for payment of

rent by mortgagee—Partition—Equity of redemption

allotted to another coparcener—Payment of rent to holder of

original mortgage or for 12 years—Effect of

The suit was

V, who was the

2—5—1877

to pay a net sum

year In September, 1877, as a result of a partition

award the equity of redemption in the mortgaged property

fell to the share of another branch represented by the

plaintiff. In spite of the partition the annual pay-

ment was continued to the plaintiff.

1910 O A 555—1910 R D 481—

1910 A W R (O C) 458

d 120—Suit for administration by

against his co heirs—Movable and

See LIMITATION ACT ARTS 120

A I R 1940 P O 215

nd 120—Co owners—Suit for joint

partition—Article applicable See

SEWA SINGH v RAGHUNANDAN.

42 P L R 276

ing the plaintiff's right

Held, that there had been a virtual dispossession of

the mortgagor by which the equity of redemption had

become barred as a result of the 4th defendant and

prior to him his father, receiving the rent of the land

ever since the beginning and setting up an hostile title in

himself and denying the plaintiff's title. *(Broomfield*

## LIMITATION ACT (1908), Art 144

and Macklin, J J) GURUNATH BALWANT v SURYA-  
KANT I L R (1910) Bom 453—189 I C 561—  
13 R B 57—42 Bom L R 393—  
A I R 1910 Bom 225

## —Art 144—Applicability—Adverse possession—

Void mortgage—Possession of mortgagee—Mortgage

with possession of inam service land burdened with

service in temple—Suit by successor to declare void—

Limitation—Possession—If adverse even from date of

mortgage See GRANT—CONSTRUCTION

1940 M W N 404

## —Art 144—Applicability—Alienation by Hindu

in grand-son—

ATION ACT.

om L R 208

142—Dis-

by defen-

T, ARTS 142

AND 144 Kar. 793

## —Arts 144 and 123—Applicability—Mahomedan

co heirs—Disputes—Starting point

Under the Mahomedan law when a Mahomedan

has been in possession of land for 12 years, that property automati-

cally becomes his.

1910 O A 555—1910 R D 481—

1910 A W R (O C) 458

d 120—Suit for administration by

against his co heirs—Movable and

See LIMITATION ACT ARTS 120

A I R 1940 P O 215

## —Art 144—Applicability—Purchaser of property

in good faith

1910 O A 555—1910 R D 481—

1910 A W R (O C) 458

d 120—Suit for administration by

against his co heirs—Movable and

See LIMITATION ACT ARTS 120

A I R 1940 P O 215

nd 120—Co owners—Suit for joint

partition—Article applicable See

SEWA SINGH v RAGHUNANDAN.

42 P L R 276

recovery of possession of land in his zamindari by the

removal of certain structures, ditches, and newly planted

trees, which constituted an interference or trespass upon

the plaintiff's claim. *(York J)* MAHOMED MAHDI v.

JAGAT SINGH

1910 O A 555—1910 R D 481—

1910 A W R (O C) 458

d 120—Suit for administration by

against his co heirs—Movable and

See LIMITATION ACT ARTS 120

A I R 1940 P O 215

nd 120—Co owners—Suit for joint

partition—Article applicable See

SEWA SINGH v RAGHUNANDAN.

42 P L R 276

—Arts 141 and 101—Sham sale deed—Suit for

possession

Col 779

—Art 141—Survey officer's decision under Survey

and Boundaries Act, S 11 or S 12—Adverse possession

1910 O A 555—1910 R D 481—

1910 A W R (O C) 458

d 120—Suit for administration by

against his co heirs—Movable and

See LIMITATION ACT ARTS 120

A I R 1940 P O 215

nd 120—Co owners—Suit for joint

partition—Article applicable See

SEWA SINGH v RAGHUNANDAN.

**LIMITATION ACT (1908), Art 145**

of unsuccessful party not affected by the decision—Computation of period of limitation—See MADRAS SURVEY AND BOUNDARIES ACT (1897) Ss 11 AND 12 (1940) 1 M L J 79 (F B)

**—Art 145—Applicability—Depository's depository**

A depository's depository is not contemplated in the Act. (*Din Mahomed, J*) LORIND CHAND v PUNJAB NATIONAL BANK, LTD

A I R 1940 Lah 254.

**—Art 148—Applicability—Mortgage conditional sale prior to T P Act**

In the case of a mortgage by conditional sale executed before 1882 i.e. before the T P Act came into force the mortgagor has a statutory right under the Bengal Regulations 1 of 1798 and 17 of 1806 to redeem within any stipulated period provided in the deed. Therefore even if there had been only a period of some years in the deed the statutory right existed by which the mort

**—Art 148—Applicability—Mortgage—Redemption by co mortgagor—Suit for redemption by other mortgagor—Limitation—Starting point**

A co mortgagor who redeems a mortgage is subrogat

the co mortgagor has redeemed the mortgage he ceases to run against the other mortgagors (*Aparna and Kowlan*) SARAIN SINGH v RAM LOCHAN T

189 I O 8

21 Pat. L. T. 702—6 B B 864—

**—Art 148—Starting point of**

of proof—Suit to redeem kanom month of known year—Plea of limitation—Limit of plaintiff to prove date of execution—Presumption as to date—If any

Where a plaintiff in a suit for redemption of a Malabar kanom (usufructuary mortgage) seeks to dispossess persons who have been in possession for about

**LIMITATION ACT (1908), Art 166**

actual starting point when a suit is challenged as barred by limitation (*Hadsworth, J*) SANKARA MENON v. KUTTANI

1940 M W N 446—

A I R 1940 Mad 639.

**—Art 155 and Cr P Code Ss 562 and 563—**

Conviction and binding over under S 562 Cr P Code

—Subsequent sentence under S 563—Appeal—Limitation—Starting point

In cases coming under Ss 562 and 563 the proceedings

fall into two parts—the sentence does not immediately

—Substituted service—If due service—C P Code, O

—Art 162—Applicability—Application for review

under S 8 (1) of the Presidency Towns Insolvency Act.

See I RESIDENCY TOWNS INSOLVENCY ACT, S 8 (1)

I L B (1940) Kar 513

**—Art 164—Due service of summons—Meaning**

of—Substituted service—If due service—C P Code, O

ed judgment debtor in the hands of his son, an applica

tion to set aside the sale by the son on the ground that

part of the property sold was his personal property falls

under Art 166 and not under Art 181 (*Harris C. J*)

and Rowland J) CHAKKU PANDA v NEMAI

—13 R P 66—6 B B 770—

A I R 1940 Pat 192.

31—Applicability—Execution

aside—Limitation—Void and

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

**—Art 166—Date of sale—Sale by Qanq Amh—**

—Starting point of

—Art 166—Applicability—Sale of debt in execu

tion—Setting aside—Limitation—See MADRAS CIVIL

RULES OF PRACTICE, R. 183

(1940) 2 M L J 503

LIMITATION ACT (1908), Art 166,

1910 O.A. 347=1910 O L.R. 227=

LIMITATION ACT (1908), Art 182,

holder drawing out money on security—Appeal allowed  
 med against non appealing defendant  
 against latter—Limitation applicable  
*See* 1939 D.T., Col 781 SOORANNA  
 189 I O 348=13 E M. 257.  
 Art. 181—Applicability—Official Receiver's ap-  
 ale void. *See* LIMITA  
 1940 N L J 505

property after his adjudication and in ignorance of it,

A.I.R. 1910 Nag 414

—Art. 169—"Notice of appeal"—Meaning.

The expression "notice of appeal" in Art 169 of the  
 Limitation Act should be taken to mean notice (actual

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have  
 sty in

is governed by Art 181, and not by Art. 183,  
 Limitation Act. Such an application cannot be  
 as one for enforcement of the final judgment  
 e within the meaning of Art. 183, but is one  
 for relief which is consequential upon the Appellate

—Art. 181—Applicability of—Application to

Nath, J.J.) BHAN DATTA UPADHIA v THESA  
 KUER I.L.R. (1940) All 248=187 I.C. 313=

—Art 182—Applicability—Application for reseta  
 tion—Limitation—Starting point of limitation—Date of  
 esh decree made on  
 GANPAT GATLU v

187 I O 354=

A.I.R. 1910 Bom 30

Award by Registrar of

sent—Limitation for

AO v CALICUT CO-

—Art 181—Applicability—Application for

OPERATIVE URBAN BANK, LTD

185 I O. 230=12 B M 536.

preparation of decree sheet

—Art 182 (2)—Appeal—Mortgage suit—Prelimi-

The preparation of a decree-sheet in a partition suit

## LIMITATION ACT (1908), Art. 182

—Art 182—Final decree in partition suit—Execution—Limitation—Starting point

For purposes of limitation under Art 182 the date of the decree in a partition suit must be taken to be the date on which the order for drawing up the final decree was passed and not the date on which the necessary stamped paper for drawing up the decree was supplied by the decree holder (*Bhude J*)

MAHARAJ NARAIN A

—Art 182—Final decree in execution—Suspension of limitation—adequacy of stamped paper

Where in a partition suit an order for drawing up a final

judgment debtor and his cause of action for execution should therefore be taken as suspended (*Bhude J*)  
KAM NARAIN v MAHARAJ NARAIN

—Art 182—“Where there has been”  
—Meaning of *See* 1939 Dig Col 783  
v FERNANDEZ 186 I O 110

—Art 182, Expl I—“Joint decree”—Partition suit—Decree giving joint possession of part of property and separate possession of other property—If joint decree or several decree

Where a decree in a partition suit gives the plaintiffs and defendants joint possession of part of the property and separate possession of the other part, the decree is a joint decree.

for a subsequent  
(*Harnes, C J*)  
v DLOKI SINGH

12 F. 2. 411—12 E. C. 359  
—Art 182 (2)—“Appeal”—If an appeal is filed against order dismissing judgment debtor’s application to record satisfaction of decree—If saves limitation for execution

The word “appeal” in Art 182 (2) of the Limitation Act means an appeal the result of which affects the decree sought to be executed. It does not mean any appeal which only affects the decree holder’s right to execute it at a particular time and a particular circumstance. An appeal against an order dismissing an application by the judgment debtor to record satisfaction of the decree which would leave the decree and without modification cannot be regarded as “appeal” within the meaning of Art 182 (2) for purposes of extending limitation (*Air J*) SEETHA-

restitution—Execution—Limitation

The language of Art 182 (2) of the Limitation Act is sufficiently wide to include an appeal which may affect the decree or order which is sought to be executed in such a way as to render the execution proceedings in connection with such decree or order infructuous. Where therefore after an order for restitution was obtained by the respondent, the appellants continued litigation in various Courts and at last his final appeal

## LIMITATION ACT (1908), Art 182

failed, an application for execution for the order for restitution filed within three years from the date of the order in such final appeal but more than three years after the order for restitution was made, is not barred by limitation (*Edgley, J*) SARASWATI DAS v DWARIK MANDAL. 41 O W N 859

—Art 182 (2)—Applicability—Appeal—Applicability

—Art 182 (2)—Applicability—Security bond in

proceeds upon a ground common to the defendants or not, and whether one defendant appeals from such decree in so far as it affects his own interests or whether

part of a decree, execution is the period of the Act commences to run only from the date of the appellate decree (*Aiyagi J*) PANDURANG v KUNWARLAL 1910 N L J 571

—Art 182 (4)—Scope—If affects S 48 C P Code *See* C P CODE, S 48 (1940) 1 M L J 235 (F B)

—Art 182 (5)—“If a decree is set aside”—

law—Application to decretal Court after transfer of decree to another Court *See* 1939 Dig Col 784 1 AM KISHOR RAM BHAKAT v SATYA NARAIN BHAKAT 185 I O 411—12 E C 359

—Art 182 (5)—Application to proper Court—Plaint in suit under O 21 R 63, C P Code *See* 1939 Dig, Col 785, *MANGU VARGAS v J R LUTTERMAN FIRM* 1940 Rang L E 22—185 I O 70—12 E E 178

judgment-debtor—Time spent in in default Court—Deduction, if permissible

—Art. 182 (5)—Final decree—Application for restitution—Wrong order returning same—If final order of appeal—Application—If final petition—Application—If fresh application or due to former one *See* 1939 Dig, Col 783

## LIMITATION ACT (1908), Art 166

1940 O A. 317=1940 O L R 227=  
1940 A W R (C C) 173= A I R 1940 Oudh 261  
—Arts 166 and 181—Official Receiver's applica-  
tion to declare execution sale void—Article applicable  
Where there is an execution sale of an insolvent's

A I R 1940 Nag 414  
—Art 169—'Notice of appeal'—Meaning  
The expression "notice of appeal" in Art 169 of the  
Limitation Act should be taken to mean notice (actual  
or constructive) of the date on which the appeal is dis-  
posed of and not of the filing of the appeal (*Bhide J*)  
NIL CHAND v HAMEL CHAND 186 I C 788=

—Art 176—Applicability—Application to add  
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—Art 181—Applicability of—Application to

*Nath, JJ*) BHAN DATTA UPADHIA v THESA  
KUZUR I L R (1940) All 246=187 I C 313=

—Art  
by decree-ho  
tion See C

—Art 181—Applicability—Application for  
preparation of decree sheet  
The preparation of  
is merely a ministerial  
Art 181, Limitation  
J) RUPCHAND v K  
13 R L 30=42 P L

## LIMITATION ACT (1908), Art 182.

holder drawing out money on security—Appeal allowed  
—Decree confirmed against non appealing defendant  
alone—Execution against latter—Limitation applicable  
—Starting point See 1939 Dg, Col 781 SOORANNA  
v VENKANNA 189 I C 318=13 R M 257

—Art 181—Applicability—Restitution pro eed  
ings—Starting point of limitation

Art 181 applies to an application for restitution under  
S 144, C P Code The *terminus a quo* from which  
limitation runs is the date of the lower appellate Court's  
decree by which the first Court's decree is reversed and  
not from the date of the High Court's decree confirming  
(*Brand J*) UJAGAR  
1940 O A 1166=

1940 A W R (H C) 679  
ity—Void execution sale—  
itation See LIMITATION  
1940 P W N 105

ACT, ARTS. 166 AND 181

Limitation Act Such an application cannot be  
as one for enforcement of the final judgment  
e within the meaning of Art 183, but is one  
for relief which is consequential upon the Appellate

—Art 182—Applicability—Application for restitu-  
tion—Limitation—Starting point of limitation—Date of  
esh decree made on  
GANPAT GATLU  
187 I C 354=  
I L R 1940 Bom 30  
ward by Registrar of  
ent—Limitation for  
AO v CALICUT CO-

OPERATIVE URBAN BANK, LTD  
185 I C 230=12 R M 536

—Art 182(2)—Appeal—Mortgage suit—Prelimi-

decree—Decree by See 1939 Dg Col 781 VEFERAN

## LIMITATION ACT (1908), Art. 182.

—Art 182—*Final decree in partition suit—Execution—Limitation—Starting point.*

For purposes of limitation under Art. 182 the date of the decree in a partition suit must be taken to be the date on which the order for drawing up the final decree was passed and not the date on which the necessary stamped paper for drawing up the decree was supplied by the decree holder (*Bhate, J*)

MAHARAJ NARAIN, A  
—Art 182—*Final decree in execution—Suspension of limitation—*

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should therefore be taken as suspended (*Bhate, J*)  
RAM NARAIN v. MAHARAJ NARAIN  
A I R 1910 L A C 227

—Art 182—"Where  
v FERNANDEZ  
Meaning of See 1939 D

—Art. 182, Expl. I—"Joint decree"—*Partition suit—Decree giving joint possession of part of property and separate possession of other property—If joint decree or several decree*

Where a decree in a partition suit gives the plaintiffs and defendants joint possession of part of the property in suit, though it also gives them separate possession of other properties, the decree cannot be regarded as both a decree. It must be regarded and an application for execution one or some of the parties interested in favour of all, so as for a subsequent application (*Harries, C J and Fazl Ali, J*)  
DLOKI SINGH 6 B.R. 12 R.P. 284=A.I.R. 1940 Pat. 147.

—Art 182 (2)—"Appeal"—*Against order dismissing judgment—To record satisfaction of decree—If execution*

The word "appeal" in Art 182(2) of the Limitation Act means an appeal decree sought to be appeal which only execute it at a particular place. An appeal application by the judgment of the decree, with and without modification "appeal" within the

restitution—Execution—Limitation

The language of Art. 182(2) of the Limitation Act is sufficiently wide to include an appeal which may affect the decree or order which is to be executed, in such a way as to render the execution proceedings in connection with such decree or order infructuous. Where, therefore, after an order for restitution was obtained by the respondent, the appellant continued litigation in various Courts and at last his final appeal

## LIMITATION ACT (1908), Art 182

failed, an application for execution for the order for restitution filed within three years from the date of the order in such final appeal but more than three years after the order for restitution was made, is not barred by limitation. (*Edgley, J*) SARASWATI DAS v. DWARIK NANDAL. 44 C.W.N. 859.

—Art 182 (2)—Applicability—"Appeal"—Appli-

(1910) 2 M.L.J. 831  
—Art 182 (2)—*Starting point*

Whatever the nature of a decree, whether a decree proceeds upon a ground common to the defendants or not, and whether one defendant appeals from such decree in so far as it affects his own interests or whether the defendant appeals from a part of a decree, the period of the Act commences to run only from the date of the appellate decree.

(*Niyogi, J*) PANDURANG v. KUNWARLAL. 1910 N.L.J. 571  
—Art 182 (4)—Scope—If affects S. 48, C. P. Code. See C. P. CODE, S 48

(1940) 1 M.L.J. 235 (F.B.)  
—Art 182 (5)—"In accordance with law"—*Application not conforming to O 21, R. 13—Omission to*

—Art 182 (5)—Application in accordance with

—Art 182 (5)—Application to proper Court—

to the proper  
be read also  
some step  
it is not to

—Art. 182 (5)—"Final order"—*Application for restitution—Wrong order returning same—If final order of disposal—Application—If still pending—Application—If fresh application—If former one.* See 1939 Dig., Col. 12 E C

## LIMITATION ACT (1908), Art 166.

1910 O.A. 347 = 1910 O L B, 227 =

1910 A.W.R. (C C) 173 = A I R 1910 Oudh 261.

—Arts 166 and 181—Official Receiver's application to declare execution sale void—Article applicable

Where there is an execution sale of an insolvent's property after his adjudication and in ignorance of it,

A.I.R. 1940 Nag 414

—Art 169—"Notice of appeal"—Meaning

The expression "notice of appeal" in Art 169 of the Limitation Act should be taken to mean notice (actual or constructive) of the date on which the appeal is proposed, and not of the filing of it

NIL CHAND v HAMEL CHAND

12 R L 418 = 42 P L R 38 =

—Art 173—Applicability—

Insolvency Act, S. 8 (1)—Application for review—Limitation. See PRESIDENCY TOWNS INSOLVENCY ACT, S 8 (1)

I L R (1940) Kar 513

—Art 176—Applicability—Application to add legal representative  
Encumbered Estate  
ESTATES ACT, S

—Art 181—

—Art. 181—Applicability of Application to for relief which is consequential upon the Appellate

—Art. 181—Applicability—Application for

## LIMITATION ACT (1908), Art 182.

holder drawing out money on security—Appeal allowed

—Decree confirmed against non appealing defendant

alone—Execution against latter—Limitation applicable

—Starting point. See 1939 D T, Col 781. SOORANNA

v. VENKANNA 189 I.C. 348 = 13 R M. 257.

—Art 181—Applicability—Official Receiver's ap-

—Art 181—Applicability—Restitution proceedings—Starting point of limitation.

Art. 181 applies to an application for restitution under S 144, C. P. Code The terminus a quo from which

1940 A W R (H C) 579

—Art 181—Applicability—Void execution sale—

Application to set aside—Limitation. See LIMITATION

ACT, ARTS. 166 AND 181. 1910 P.W.N. 105

OPERATIVE URBAN BANK, LTD

185 I C 230 = 12 R M 536.

Madras Co-operative Societies Act—Application to execute—Limitation. See MADRAS CO OPERATIVE

KUTTI v KOYA KUTTI.

185 I.C. 578 = 12 R M 561

## LIMITATION ACT (1908), Art. 182.

—Art 182—Final decree in partition suit—Execution—Limitation—Starting point

For purposes of limitation under Art 182 the date of the decree in a partition suit must be taken to be the date on which the order for drawing up the final decree was passed and not the date on which the necessary stamped paper for drawing up the decree was supplied by the decree holder (*Bhida, P. D. N. NARAIN*)  
MAHARAJ NARAIN

—Art 182—Final decree in partition suit—Suspension of limitation

Final decision on the point by the High Court, should in any case be deducted as the decree holder could not get a decree drawn up owing to the dispute raised by the judgment debtor and his cause of action for execution should therefore be taken as suspended (*Bhida, P. D. N. NARAIN*)  
MAHARAJ NARAIN

A I R 1940 Lah 337  
—Art 182—Where there has been an appeal  
—Meaning of *See* 1939 D G Col 783 D M JACINTO  
v FERNANDEZ 186 I O 110=12 R B 297

—Art 182, Expl I—"Joint decree"—Partition suit—Decree giving joint possession of part of property and separate possession of other property—If joint decree or several decree

Where a decree in a partition suit gives the plaintiffs and defendants joint possession of part of the property in suit though it also gives them separate possession of other properties, the decree cannot be regarded as both a joint and a several decree. It must be regarded as a joint decree, and an application for execution taken out by one or some of the parties interested, would take effect in favour of all so as to save for a subsequent application by the  
(*Harries C J and Fazl Ali J*) SARY  
v DEOKI SINGH 6 B R 94=185  
12 R P 284=A I R 1940

—Art 182 (2)—"Appeal"—If availing of—Appeal against order dismissing judgment debtor's application to rectify satisfaction of decree—If saves limitation for execution

The word 'appeal' in Art 182 (2) of the Limitation Act means an appeal the result of which affects the decree sought to be executed. It does not mean any appeal which only affects the decree holder's right to execute it at a particular time and a particular circumstance. An appeal against an order dismissing an application by the judgment-debtor to record satisfaction of the decree which would leave the decree valid and without modification cannot be regarded as an "appeal" within the meaning of Art 182 (2) for purposes of extending limitation (*Ajmer J*) SEETHA

restitution—Execution—Limitation

The language of Art 182 (2) of the Limitation Act is sufficiently wide to include an appeal the result of which may affect the decree or order which it is sought to execute in so far as to render the execution pro-

## LIMITATION ACT (1908) Art 182

ceeded an application for execution for the order for restitution filed within three years from the date of the order in such final appeal but more than three years after the order for restitution was made, is not barred by limitation (*Edgley J*) SARASWATI DAS v DWARIK MANDAL, 41 O W N 859

—Art 182 (2)—Applicability—Appeal—Applicability

(1910) 2 M L J 831

—Art 182 (2)—Starting point

Whatever the nature of a decree, whether a decree proceeds upon a ground common to the defendants or not, and whether one defendant appeals from such decree in so far as it affects his own interests or whether all the defendants appeal from only a part of a decree and whether the parties against whom execution is sought were parties to the appeal or not the period of limitation under Art 182 (2) Limitation Act commences to run only from the date of the appellate decree (*Niyogi J*) PANDURANG v KUNWARLAL

1910 N L J 571

—Art 182 (4)—Scope—If affects b 48 C P Code *See* C P CODE S 48

(1910) 1 M L J 235 (F B)

—Art 182 (5)—In accordance with law—Application not conforming to O 21 R 13—Omission to give proper description of property to b attached—Effect

An application for attachment of immovable property which does not contain a description of the property sufficient to identify it as required by O 21 R 13

law—Application to decretal Court after transfer of decree to another Court *See* 1939 D G Col 784 RAM KISHOR RAM BHAKAT v SATYA NARAIN BHAKAT, 185 I O 411=12 R C 359

—Art 182 (5)—Application to proper Court—Plant in suit under O 21 R 63 C P Code *See* 1939 D G Col 785 MAUNG MAUNG v U R CHEYINAK FIRM, 1910 Rang L E 82=185 I O 70=12 R E 178

—Art 182 (5)— bona fides of decree-holder—If material *See* 1939 D G Col 785 U MAUNG MAUNG v SHAHUL HAMID, 188 I O 42=12 R E 213

—Art 182 (5)—Construct on—Inadequacy of judgment-debtor—Time spent in in-decency Court—Deduction of permissible

ade in accordance with law to the proper (5) Limitation Act is to be read also including words to take some step in

As the Insolvency Court is not the proper Court for execution it follows that any such order entered and taken in that Court do not extend the period. (*Graver J*) SETH NANDLAL RAMDATT, 1910 N L J 605

—Art 182 (5)—Final order—Application for same—If final order pending—Subsequent or one to revise 785 KRISHNAMA-



## LIMITATION ACT (1908), Art 166.

1940 O.A. 347=1940 O.L.B. 227=

1940 A.W.R. (C.C.) 173=A.I.R. 1940 Oadh 261.

—Arts 166 and 181—Official Receiver's application to declare execution sale void—Article applicable.

Where there is an execution sale of an insolvent's

## LIMITATION ACT (1908), Art 182.

holder drawing out money on security—Appeal allowed

—Decree confirmed against non appealing defendant

alone—Execution against latter—Limitation applicable

—Starting point. See 1939 Dig., Col 781. SOORANNA

v. VENKANNA. 189 I.C. 348=13 E.M. 257.

—Official Receiver's application sale void. See LIMITA

181. 1940 N.L.J. 505

## A.I.R. 1940 Nag 414

—Art 169—"Notice of appeal"—Meaning

The expression "notice of appeal" in Art 169 of the

Limitation Act should be taken to mean notice (actual

or constructive) of the date on which the appeal is

posed of, and not of the filing of the

NIL CHAND v. HAMEL CHAND

12 R.L. 418=42 P.L.R. 38=

—Art 173—Applicability—

Insolvency Act, S. 8 (1)—Applica

tion. See PRESIDENCY TOWNS IN

(1). I.L.

—Art 176—Applicability—

legal representatives of deceased applicant under U.P.

Encumbered Estates Act. See U.P. ENCUMBERED

ESTATES ACT, S. 50 AND C.P. CODE, O. 22

1940 O.A. 518

—Art 181—Applicability—Application by decree

holder for inquiry into mesne profits under O. 20, R. 12

(3) (Madras Amendment) C.P. Code—Limitation. See

C.P. CODE, O. 20, R. 12 (3) MADRAS (AMENDMENT)

50 L.W. 633=(1940) 1 M.L.J. 54 (F.B.).

—Art. 181—Applicability of—Application to

continue execution proceedings.

All applications are not governed

by Art 181.

—Art 181—Applicability—Application for resale

by decree holder under O. 21, Rr. 86 and 87—Limita

tion. See C.P. CODE, O. 21, Rr. 71, 86 AND 87.

(1940) 1 M.L.J. 537

—Art. 181—Applicability—Application for

preparation of decree sheet

—Art 181—Applicability—Application for

preparation of decree sheet

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preparation of decree sheet

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preparation of decree sheet

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preparation of decree sheet

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preparation of decree sheet

—Art 181—Applicability—Application for

preparation of decree sheet

—Art 181—Applicability—Application for

preparation of decree sheet

—Art 181—Applicability—Application for

preparation of decree sheet

—Art 181—Applicability—Application for

preparation of decree sheet

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

—Art 181 and 183—Restitution—Application

for, in consequence of order of His Majesty in Council

reversal of decree or date of fresh decree made on

remand. See 1939 Dig., Col 781 GANPAT GATLU v.

NAVINITAL RANCHHODAS 187 I.C. 354=

12 R.B. 426=A.I.R. 1940 Bom 30

—Art 182—Applicability—Award by Registrar of

Co-operative Societies—Enforcement—Limitation for

See 1939 Dig., Col 782 SUBBA RAO v. CALICUT CO-

OPERATIVE URBAN BANK, LTD

185 I.C. 230=12 R.M. 536.

—Art 182 (?)—Appeal—Mortgage suit—Prelim-

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—Art 182 (?)—Appeal—Mortgage suit—Prelim-

—Art 182 (?)—Appeal—Mortgage suit—Prelim-

—Art 182 (?)—Appeal—Mortgage suit—Prelim-

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—Art 182 (?)—Appeal—Mortgage suit—Prelim-

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—Art 182 (?)—Appeal—Mortgage suit—Prelim-

—Art 182 (?)—Appeal—Mortgage suit—Prelim-

## LIMITATION ACT (1908), Art. 182

point of limitation under Art. 182 (5) of the Limitation

## LIMITATION ACT (1908), Art. 182

application for execution of decree

19 Pat 354=1940 L. W. L. 4004-

A I R 1940 Pat 677

Art 182 (5)—Scope—If controls S. 14 See

LIMITATION ACT, S. 14 19 Pat 354.

Art 182 (5)—Step in aid—Application against

arrest See 1939 Dig., Col. 788 KISHAN

PREM SINGH I L R (1940) Lah 223=

1940 I O 239=12 R L 373=42 P L R 723

182 (5)—Step in aid—Application for

attachment debtor residing outside British

on application for the arrest of the judge

residing outside British India does not

step in aid of execution. (Mir Ahmad, J.)

INDIAN BRITISH MEDICAL STORES

189 I O 738=13 R. Pesh 16=

A I R. 1940 Pesh. 27

182 (5)—Step in aid—Application for

transfer to another Court for execution—If

an application for transfer is made

for execution in another Court

correct figure as to the costs of a suit is

A I R 1940 Nag 64

—Art 182 (5)—Step in aid—Execution of decree

returned for amendment but not so presented within

time—If saves limitation. See 1939 Dig., Col. 780

CHIDAMBARAM SATTIAN &amp; MURUGESAN PILLAI

1940 I O 239=12 R L 373=42 P L R 723

—Art. 182 (5)—Step in aid—Execution of decree

returned for amendment but not so presented within

time—If saves limitation. See 1939 Dig., Col. 780

CHIDAMBARAM SATTIAN &amp; MURUGESAN PILLAI

1940 I O 239=12 R L 373=42 P L R 723

—Art. 182 (5)—Step in aid—Execution of decree

returned for amendment but not so presented within

time—If saves limitation. See 1939 Dig., Col. 780

CHIDAMBARAM SATTIAN &amp; MURUGESAN PILLAI

1940 I O 239=12 R L 373=42 P L R 723

in accordance with

(Hort and others v. J.) BISHUNDEO N.

MISSIRI KAGHUNATH PRASAD 19 Pat

1010 P W N. 501=A I R 1940 F.

—Art 182 (5)—Step in aid—Application for

transfer to another Court for execution—If

an application for transfer is made

for execution in another Court

The test for deciding whether a certain application

a step in aid is whether the granting of the appl

Art. 182 (5)—Step in aid—Application for

transfer to another Court for execution—If

an application for transfer is made

for execution in another Court

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transfer to another Court for execution—If

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transfer to another Court for execution—If

an application for transfer is made

for execution in another Court

## LIMITATION ACT (1908), Art 182

CHARI v. CHENGALROYA NAIDU 189 I C 185=  
13 B M 180=A I R 1940 Mad 281  
—Art 182 (5)—Final order—Date of—Dismissal

## LIMITATION ACT (1908), Art 182

(King, J.) NANJUNDA CHETTY v. LAKSHMANAN  
CHETTIAR. 1940 M W N. 960=52 L W. 415=  
(1940) 2 M L J. 502-

s. 182 (5)—"In accordance with law"—  
application by assignee of decree—Assign-  
eemently declared void—Application by at  
saves limitation

is not in-  
assign-  
ed in a  
would be

infer of decree to Court  
r the time being has not  
—If saves limitation,  
rdance with law" does

that such an application should be made  
should only be made

MUTHUKRISHNA RAJA v. VISWALIN  
VAR. 1940 M W N 547=A I R

—Art 182 (5)—"In accordance with law"

necessary jurisdiction at the particular time, is not an

(Somayya J.)  
KADAVARAYAN

—Art 182 (5)—"In accordance with law"—  
—Deed not registered—  
—free—If saves limitation  
—taking registered deed.

—Art 182 (5)—"In accordance with law"—Ap-  
plication though omitting to mention previous applica-  
tion—If saves limitation See 1939 Dig. Col 786.  
DOLARAM v. MULOMAL 185 I C 835=12 B S 181.

—Art 182 (5)—"In accordance with law"—Ap-

contemplates transfer of the  
decree holder's interest in a decree. In the case of a  
mortgage decree such a transfer can be effected only by  
a registered instrument. If the instrument is not regis-  
tered, no matter what its terms may be, it cannot effect  
An application filed by an assignee under  
"tered deed of transfer, on the assertion that a

Decree against family property in  
ant—Application for arrest of  
limitation

Even though a decree does not  
debtor personally liable but is only against the family prop-  
erties in his hands an execution application praying for  
his arrest cannot be regarded as being not in accordance  
with law. The granting of a decree against assets in a

—Art 182 (5)—"In accordance with law"—Pro-  
perty attached before judgment—Application for sale in  
execution without description of property—If step in-  
adequate—C P Code, O 21, R. 13 (a)—Scope

ought to be sold has already  
gment, an application in execu-  
tion of property which does not  
the property in manner laid  
C P. Code, is an application  
so as to give a fresh starting

**LIMITATION ACT (1908), Art 182**

point of limitation under Art 182 (5) of the Limitation Act O 21, R 13, C P Code, does not apply where the

time  
M C

has transferred the decree to another Court for execution and which has not received a certificate of non

PRASAD 19 Pat 354=1940 P WN 504=

AIR

—Art 182 (5)—Scope—If control  
LIMITATION ACT, S 14

—Art 182 (5)—Step in aid—Appl  
surety for his arrest See 1939 Dig, Col

SINGH v PREM SINGH I L R (194

186 I O 239=12 R L 373=4

—Art 182 (5)—Step in aid—Application for  
arrest of judgment debtor residing outside British  
India.

An execution application for the arrest of the judgment-debtor residing outside British India does not provide a step in aid of execution (Mir Ahmad J)

It is settled that an application for transfer of a decree to another Court for execution is a step in aid of execution

application

with law

NARAIN

'at 354=

) Pat 677

—Art 182 (5)—Step in aid—Application in partition suit for preparation of formal decree sheet on stamped paper

The test for deciding whether a certain application is a step in aid is whether the granting of the application would aid execution. Hence the application in a partition suit for preparation of a formal decree-sheet on stamped paper supplied by the decree-holder should be treated as a step in aid of execution for purposes of Art 182 (Bhadr, J) KAM NARAIN v MAHARAJ NARAIN.

A.I.R. 1940 Lah 337

—Art 182 (5)—Step in aid—Application to cancel order recording satisfaction of decree and to review the decree—If step in aid See 1939 Dig, Col 783

application to transfer the decree to another Court for execution is a step-in-aid of execution although no

**LIMITATION ACT (1908), Art 182.**

application for execution is pending at the time (Edgley, J) RAMNARAYAN JAGANNATH v RADHA-

consideration, is a valid and  
would constitute a step in aid

application not giving correct figures of costs

Where an execution application gave an incorrect figure of costs to the court, it was not a step in aid

AIR 1940 Nag 81

—Art 182 (5)—Step in aid—Execution petition returned for amendment but not re presented within time—If saves limitation See 1939 Dig, Col 789.

CHIDAMBARAM CHETTIAR v MURUGESAN PILLAI

I L R (1910) Mad 60=189 I O 411=

13 R M 266

—Application for execution for two instalments then due Subsequent application for all instalments—If saved by prior application

On the language of Art 182 (5) of the Limitation Act if there is an application for execution of so much of the decree as is executable that is a step-in-aid of execution of the decree

in for of say exo (Bhadr, J) Bh

—Art 182 (5)—Step in aid—Plaint in claim suit under O 21, R. 63—If an application which could save time

The plaint in a suit filed by the decree-holder under O 21, R. 63, C. P. Code to set aside the order in the claim proceedings is not an 'application' within the

Dig., Col. 787 GUMTI DESH v JUCAL

187 I C 831=

## LIMITATION ACT (1908), Art 182

—Art 182 (5)—*Step in aid—Rejection of application on the ground of decree holder's default—Effect*

Where an execution application is rejected owing to the decree-holder's failure to appear on the day fixed and to correct certain mistakes in the figures as to costs, it does not amount to an express or

—Art 182 7)—*Instalment decree—Default clause—Decree holder's option—Limitation—Starting point*  
See 1939 Dig, Col 790 LEHRAJ SRUMAL v KHUB CHAND I L R (1940) Kar 385

—Art 183—*Admission of liability in respect of decree—Admission not made to decree holder—If extends limitation* See LIMITATION ACT S 19 AND ART 183 I L R (1939) 2 Cal 523

—Art 183—*Applicability—Preliminary mortgage decree affirmed on appeal by Privy Council—Final decree passed pending appeal—Execution—Limitation*  
See 1939 Dig, Col 790 BHOLA NATH SEN v JOGENDRA MOHAN DAS 186 I O 215=12 R O 455

—Arts 183 and 181—*Execution against legal representative of judgment-debtor—Application for leave—Article applicable* See 1939 Dig, Col 790 GOBINDA NATH SAHA v DURGA NARAIN SAHA 187 I O 759=12 R O 617=A I R 1940 Cal 171

—Art 183—*Joint judgment debtors—Revivor against one—If operates as against all*

An order of revivor of a decree against two persons jointly, e.g., partners of a firm against whom the decree has been passed when made in an application for execution against one of them only, does not keep the decree alive against the other. No one can be prejudicially affected by any judicial order to which he is not

—Arts 183 and 181—*Restitution—Application for, in consequence of order of His Majesty in Council—Article applicable* See LIMITATION ACT ARTS 181 AND 183 41 OWN 438=71 O L J 127

—Art 183—*"Revivor"—Meaning of—Notice*

It is held that to constitute revivor of a decree there must be a decision that the decree is capable of execution. The issue of a notice under O 21 R. 22 C P Code is not a

## MADRAS AGENCY TRACTS INTERESTS AND LAND TRANSFERS ACT (1917), S 5

operates as a "revivor" (*Dhawan and Chatterji, JJ*)  
HAR NARAIN v DAYABHAI HIRA CHAND  
188 I O 611=13 R P 13=6 B R 708=  
1940 P W N 896=21 Pat L T 431=  
A I R 1940 Pat 596

## MADRAS ACTS AND RULES

Abkari Sales Notification  
Agency Tracts Interests and Land Transfers Act (I of 1917)

## Co operative Societies Act (VI of 1932)

Co operative Societies Act (VI of 1932)

## Nambudri Act (XXI of 1923)

Prevention of Adulteration Act (III of 1918).  
Prohibition Act (X of 1937)

Prohibition Act (X of 1937)

Act (V of 1930)

## Survey and Boundaries Act (IV of 1897)

Village Courts Act (I of 1899)

MADRAS ABKARI SALES NOTIFICATION,  
B 27—*Scope—Agreement between bidder at sale and another to do business as partners—Bid only in name*  
—*Legality of agreement*

partnership agreement, either contemporaneous or subsequent to an Abkari auction sale, containing that the proprietary interest in the business is on by virtue of the licence granted to the bidder

auction provided that the bid is not made in the names of the partners as and for the partnership (*Madras*

is capable of execution, and therefore *prima facie* Jurisdiction of Ordinary Civil Court See 1939 Dig.



## LIMITATION ACT (1908), Art 182

—Art 182 (5)—*Step in aid—Rejection of application on the ground of decree holder's defaults—Effect*

Where an execution application is rejected owing to the decree-holder's failure to appear on the day fixed and to correct certain mistakes in the figures as to costs it does not amount to an express or

—Art 182 7)—*Instalment decree—Default clause—Decree-holder's option—Limitation—Starting point*  
See 1939 Dig, Col 790 LEHHRAJ SIRUMAL v KHUB CHAND I L R (1940) Kar 385

—Art 183—*Admission of liability in respect of decree—Admission not made to decree holder—If extends limitation* See LIMITATION ACT § 19 AND ART 183. I L R (1939) 2 Cal 523

—Art 187—*Decree affirmed—Decree passed—See 1939 Dig*  
JOGENDRA NIC

—Art 183—*Joint judgment debtors—Revivor against one—If operates as against all*

An order of revivor of a decree against two persons jointly, e g, partners of a firm against whom the decree

—Arts 183 and 181—*Restitution—Application*

under O 21 R 22 C P Code—*Effect of—Proceedings under O 21 R 50 C P Code, for les—If operates as revivor—Order of arrest—Effect of*

1940 P W N 896=21 Pat L T 431=

A I R 1940 Pat 596

## MADRAS ACTS AND RULES

Abkari Sales Notification  
Agency Tracts Interests and Land Transfers Act (I of 1917)

Agriculturists Relief Act (IV of 1938)

Borstal Schools Act (V of 1926)

City Municipal Act (IV of 1919)

City Tenants Protection Act (III of 1922)

Civil Courts Act (III of 1873)

Civil Rules of Practice

Co operative Societies Act (VI of 1932)

Court of Wards Act (I of 1902)

Criminal Rules of Practice

Debt Conciliation Act (XI of 1936)

District Municipalities Act (V of 1920)

Elementary Education Act (VIII of 1920).

Estates Land Act (I of 1908)

Gaming Act III of 1930)

Hereditary Village Offices Act (III of 1895)

High Court (Appellate Side Rules)

High Court (Civil Rules). See MADRAS CIVIL RULES OF PRACTICE

High Court (Criminal Rules) See MADRAS CRI-

Malabar Compensation for Tenants Improve-ments Act (I of 1900)

Malabar Tenancy Act (XIV of 1930)

Marumakkathayam Act (XXII of 1933)

Motor Vehicles Taxation Act (III of 1931)

Motor Vehicles Rules

Nambudri Act (XXI of 1923)

Prevention of Adulteration Act (III of 1918).

Prohibition Act (X of 1937)

Revenue Boards Standing Order

Revenue Recovery Act (II of 1864)

Suppression of Immoral Traffic Act (V of 1930)

Survey and Boundaries Act (IV of 1897)

Village Courts Act (I of 1899)

## MADRAS ABKARI SALES NOTIFICATION.

R 27—*Scope—Agreement between bidder at sale and another to do business as partners—Bid only in name of one—Legality of agreement*

A partnership agreement, either contemporaneous with or subsequent to an Abkari auction sale, con-

## MADRAS AGRIC. RELIEF ACT (1938)

Col. 792. AMMIANNA v. RAJA REDDI

188 I.C. 171 = 12 R.M. 807 =

A.I.R. 1940 Mad 160 = (1940) 1 M.L.J. 177.

mortgage is entitled to raise the question as to the true amount payable to the plaintiff, as he is a person entitled to redeem the mortgage. His application for scaling down cannot be rejected on the ground that the suit is not one to enforce

J) VARAHALAYYA

1940 M

—Mortgage dec

family—Application

Relief under Act if

restricted only to agricultural land included in mort

Where one member of a joint Hindu family sought to have a debt due by the joint family scaled down,

## MADRAS AGRIC. RELIEF ACT (1938), S. 3.

ed in S. 3 (ii) (a) to (d). Then the burden shifts to the respondent (creditor) to show *prima facie* that the applicant is excluded by one or other of the provisos.

income tax in 1939-40 in respect of income of previous year—If brings assessee within the proviso—Test to decide.

Proviso A to S. 3 (ii) of the Madras Agriculturists'

assessment is in respect of the income of the previous year. The criterion is not the period in respect of which the assessment is made but the date of the assessment. (Widow and Patanjali Sastri JJ) RAJOO v.

PANDARAM v. LAKSHMINARAYANA CHETTIAR

51 L.W. 269 = 1940 M.W.N. 283 =

A.I.R. 1940 Mad 455 = (1940) 1 M.L.J. 300

—Ss 3 (2) and 23—Person owning agricultural lands outside municipality in addition to other lands within the Municipality—If excluded from the definition of "Agriculturist"—Sale in execution of judgment—debtor's property—Expiry of thirty days without application for confirmation of sale—Debtor is still has saleable interest in the property to apply under S. 23 of Act IV of 1938.

A person who claims to be an assessee has a saleable interest in agricultural lands within a Municipality and if he has wholly immaterial whether or not agricultural lands within a Municipal debtor whose property is sold in execution of a judgment under certain conditions so long as he can apply to have the sale set aside that is to say till the expiration of thirty days from the date of sale. After the expiry of such period for an application to set aside the auction sale the auction purchaser can effectively sell the property purchased even in the absence of a confirmation of

—S. 3 (ii), Proviso B—Applicability—No assessment in two half years preceding 1-10-1937—Assessment in 1938 retrospectively covering half year commencing 1-4-1939—If excluded from benefit of Act—Test to decide

The criterion for exclusion under Proviso B to S. 3 (ii) of the Madras Agriculturists Relief Act is the time within which the assessment is made and not the actual period for which the tax is payable. A debtor who is admittedly not assessed to profession tax within the two years preceding 1-10-1939, cannot be held dis

—S. 3 Proviso — Construction — Assessed—Meaning of Sec 1939 D.G. Col. 792 SWAMINATHA ODAYAR v. SRINIVASA IYER.

188 I.C. 424 =

12 R.M. 629

—S. 3 (ii), Proviso B—Construction—Assessment for a consecutive half years or valid assessment—If

IV of  
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e  
tion



## MADRAS AGRIC RELIEF ACT (1938) S 3

—S 3 (ii), Proviso C—*Construction and scope—Mere interest in property in respect of which some one is assessed—If sufficient to exclude person interested—Actual assessment—Necessity*

Proviso C to S 3 (ii) clearly requires that, in order the individual must have been

(1940) 2 M L J 811  
—Ss 3 (ii) Proviso D and 15—*Applicability—Kanom held by tarwad paying over Rs 500 as land revenue—Suit for redemption—Partition of tarwad pending suit—Kanom then Rs 500 as land for scaling down arre*

Maintainability  
On 10-9-1934, the petitioner who was a jenmi sued to redeem a kanom of 23-3-1915, which was held by the tarwad of the respondent (9th defendant in the suit). The tarwad admittedly paid more than Rs 500 as land revenue and was therefore not an agriculturist in view of the Proviso D to S 3 (ii) of the Madras Agriculturists' Relief Act. Pending the suit, on 5-7-1935 there was a partition in the responder which the kanom right in question was *tarawdi* represented by the respondent, paid less than Rs 500 as land revenue and was therefore entitled to be regarded as an agriculturist as defined by the Act. The respondent after the partition, filed an application under S. 15 of the Act for relief under the Act. The petitioner contended that since he filed his suit against the tarwad as a whole, which was the

'agriculturist'

S 3 (ii), proviso D, must be read as covering a land holder of an estate or estates in respect of which estate or estates a sum exceeding Rs 500 is paid as peshkash. The fact that he is not the real owner of one of the

—S 3 (ii), Proviso D—*'Out rent, tadi, poruppu or the like'—'Planting, Laxal fees, road cess and water charges*

## MADRAS AGRIC RELIEF ACT (1938) S 4

SEKARA AIYAR v OFFICIAL RECEIVER, WEST TANJORE  
1940 M W N 916-52 L W 491=

A I R 1940 Mad 915=(1940) 2 M L J 461

—S 3 (ii), Proviso D—*Total payments of land*

PATTI MAMMAD v NARAYANA PATTAR  
52 L W 835=(1940) 2 M L J 934

—S 3 (ii) (a)—*Applicability—Holder of vendor's lien in agricultural land—Right to benefit of Act*

agriculturist (*Wadsworth and Patanjali Sastri JJ*)  
SINGARACHARIAR v PAPPATHI ANIMAL

1940 M W N 959=52 L W 436=  
(1940) 2 M L J 501

—S 3 (ii) (a)—*Simple mortgagee—If agriculturist*

52 L W 451=1940 M W N 1010=  
(1940) 2 M L J 513

—S 3 (ii) (a)—*Simple mortgagee—If agriculturist*

A simple mortgagee of agricultural land has a saleable within the definition Madras Act IV of 1938 (*Sastri, JJ*)

PATTI AIYAR

52 L W 490=1940 M W N 1000

52 L W 481=1940 M W N 1010=  
(1940) 2 M L J 513

—Ss 3 (v) and 8—*'Creditor'—If includes success assignee—Renewal in favour of assignee from creditor—If renewal to same creditor*

hatham administered  
right to apply under  
DISTRICT BOARD OF  
PALLAVARAIK.  
239-188 I O 610=  
I R 1910 Mad 231

MADRAS AGRIC. RELIEF ACT (1938), S. 4

MADRAS AGRIC. RELIEF ACT (1938), S. 8

A registered society formed under the Societies Registration Act is a corporation, and therefore a debt due to such a society cannot be scaled down under Madras Act IV of 1938.

KATARAM

S

Liability

—If debt

Oct 1938

—Ss. 7, 8 and 9—Applicability—Decree passed after Act came into force—Liability to be scaled down

decree has been scaled down in the year 1938 reading the Act 8 and 9 with the Act. The Legislature

age debt. The principal amount of these two debts frequently advanced

"other property" within the meaning of the provision if he wants then

Exemption under S. 4, Cl. (b)—Applicability.

## MADRAS AGRIC. RELIEF ACT (1938), S. 8

On 20th September, 1931, A sold some trees to B, who paid Rs 400, but before he could cut and carry

... hortive sale was one for money had and received to his account, and the sale having failed *ab initio*, the liability to refund the same arose when it was received by the vendor, A, (29th April, 1931), and therefore fell under S 8 of the Act, (*Wadsworth and Potanfalt Sastri*, 11 P. D. 111, P. D. 111, P. D. 111).

decreed on appeal after the passing of the Madras Agriculturists' Relief Act, it is only after the judgment is pronounced in the appeal allowing the claim, that any necessity could arise for making an application to the court. The court is not bound to pronounce that the debtor from application as early as possible after the

—Ss 8 and 9—Appropriation—Debtor paying amount to creditor towards debt—Appropriation—

claims the balance, he must be deemed to have appropriated the amount first in payment of interest and then in payment of the principal, when there has been no indication by the debtor as to the mode of appropriation. (*Venkataramar Krishnian C*)

—S 8—Appropriations made by creditor—plaint filed before 1-10-1937—If can be ignored—

Where in a plaint filed by the creditor before October, 1937, the creditor has appropriated all the interest towards such appropriations cannot be ignored for the purpose of Sec 8 (1) of the Act IV of 1938. The debt has to be scaled on the basis of the amount claimed in the plaint as (*Wadsworth and Potanfalt Sastri*, J.J.)

## MADRAS AGRIC. RELIEF ACT (1938), S. 8

PERIAKARUPPAN v. MARAPPA GOUNDAN.  
52 L. W. 579—(1940) 2 M. L. J. 654  
—P. D. 111, P. D. 111, P. D. 111

(1940) 2 M. L. J. 648  
—S 8—Appropriation of payment towards interest prior to 1st October, 1937—If can be reopened.

If there has been an appropriation of payments made towards interest before 1st October, 1937, to the extent of cancellation stand. Any payment, and before deemed to be (*Wadsworth and Potanfalt Sastri*, J.J.)  
1. W. 431 (2) = 2 M. L. J. 560.

—S. 8—Compromise decree—Mortgage to stakeholder of chit fund for payment of Rs 9000 in 18 instalments of Rs 500 each—Suit on mortgage—Compromise—

was 9000 eight ticket npro of a n of in terms was passed on 14th application for scaling down the compromise decree.

Held, that the liability must be considered to have

—Ss 8 and 9—Compromise decree prior to Act—Payment under—Appropriation of payment—Right of creditor—Execution application by creditor after Act

towards interest and costs and the balance towards the principal. The debtor subsequently applied under S. 8 of the Madras Agriculturists' Relief Act to scale down the debt.

Held, (1) that the date of the execution application could not be taken to be the date on which the appro-

MADRAS AGRIC RELIEF ACT (1938) S 8

MADRAS AGRIC RELIEF ACT (1938) S 8

pration was made by the creditor; (2) that since the debtor did not himself Where for the interest due on a mortgage of 1929 the creditor was entitled to pay interest and as the claim represents only interest on the manner he did (3) the original debt the decree may in some ways he proceeding the promissory rise to a new debt the date note for the interest due on the mortgage does not amount to payment of interest on the debt and a fresh advance of the sum as principal under the promissory note (Hudsonworth and Potanjals Sastis JJ)

the date on which the debt was incurred so as to make

(Horswell, J) NARAYANASWAMI NAIDU v RAJA MANICKAM PILLAI 51 L W 237 = 1940 M W N 265 = A I R 1940 Mad 419 = (1940) 1 M L J 225

1932 the scaling down must be governed by S 8 and not by S 9 When the decree merely enforces the payment of a pre existing debt bearing interest that pre existing debt must be regarded as the liability which will govern the section to be applied (Hudsonworth and Potanjals Sastis JJ) RAMAKSHAYYA v KUTUM

—S 8, Expl.—Applicability—Debt incurred by member of joint Hindu family for family—Execution of fresh document by another member of family—If renewal of previous debt Where a member of a joint Hindu family executes a

which interest is to run S 8 of Madras Act IV of 1938 as a whole mentioned in sub S (1) falling under that balance due from 1-10- and 1940 M W N 1222 = 2 M L J 870 Promissory

debtor in each case is the same person namely the joint

immovable property and mortgage by vendee to mortgagee of vendor as part of same transaction—Mortgage—If renewal of or inclusion of pre existing liability Where a sale of immovable property is in theory anterior to a fresh mortgage executed by the vendee to the original mortgagee who had a mortgage from the

MADRAS AGRIC RELIEF ACT (1938), S 8

On 20th September, 1931, A sold who paid Rs 400 but before he could them away, a third party successfully mount claim to them and the sale failed. On 4th November, 1936 B obtained A, for the amount paid with interest at 12 per cent per annum till date of suit (20th August, 1934) and costs and subsequent interest at 6 per cent on the aggregate amount A applied for scaling down the debt under Act IV of 1938. A was an agriculturist.

Held, that whatever be the nature of the liability to pay the principal sum—whether it originated in contract or

abortive sale was one for money had and received into, the liability as received by and therefore fell and Patanjali

Sastri J J)  
1940

—Ss 8 and 9—Applicability and scope dismissed—Appeal—Judgment allowing application for scaling down after judgment and drawing up of decree—Maintainability

Where a suit is dismissed by the trial Court decreed on appeal after the passing of the Madras

—Ss 8 and 9—Appropriation—Debtor paying

in payment of the principal, when there has been no indication by the debtor as to (Venkataramana Rao, J)  
KRISHNIAH CHETTY  
52 L W 295.

MADRAS AGRIC RELIEF ACT (1938) S 8

towards interest after application by debtor for relief

Where towards a promissory note an open payment is made in August, 1937, towards the debt generally and it has not been appropriated by the debtor or the creditor towards the principal or interest, the creditor is not entitled, after the debtor has sought relief under the Madras Act IV of 1938 to treat the payment as appro

—S 8—Appropriation of payment towards interest prior to 1st October 1937—If can be reopened

If there has been an appropriation of payments made October, 1937, to the extent cannot be any cancellation appropriation will stand. Any 1st October, 1937, and before

—S 8—Compromise decree—Mortgage to stakeholder of chit fund for payment of Rs 9000 in 18 instalments of Rs 500 each—Suit on mortgage—Compromise decree for payment of smaller amount in five instalments—Liability of decree to be scaled down—on which liability to be regarded as incurred mortgage bond in favour of the stakeholder was executed on 16th July 1923, for payment of Rs 9000 in 18 instalments of Rs 500 each payable every eight months. A suit on the mortgage was compromised by the plaintiff agreeing to accept payment of Rs 9000 in five instalments in full satisfaction of the mortgage bond and a decree in terms was passed on 14th July 1937. In an application for scaling down the compromise decree, Held that the liability must be considered to have

Payment under—Appropriation of payment—Right of

## MADRAS AGRIC RELIEF ACT (1938) S 8

priation was made by the creditor, (2) that since the debtor did not himself make a specific appropriation, the creditor was entitled to appropriate the amount in the manner he did, (3) that although the compromise decree may in some ways be considered to have given rise to a new debt, the date of the compromise was not the date on which the debt was incurred so as to make

(Horwill, J) NARAYANASWAMI NAIDU v RAJA MANICKAM PILLAI 51 L W 237-  
1940 M W N 265 = A.I.R. 1940 Mad 419-  
(1940) 1 M L J 225

—Ss 8 and 19—Compromise decree—Scaling down—If can be scaled down on basis of original principal amount or renewal of pre existing liability

Where it can be shown that the liability under a compromise decree is in renewal of a pre existing liability to the same creditor, the debt must be scaled down on the basis of the principal amount originally advanced together with the amount of any subsequent advances (Madurath and Potanjali Sastri JJ) VENKAT ANIMAL v RAMASWAMI AVIAR 52 L W 807-  
1940 M W N 1081 = (1940) 2 M L J 685

—S 8 (1) and (4)—Construction and scope—“Refund”—Meaning of—Appropriations made after 1st October 1937—If can be repaid

Appropriations made after 1st October 1937, and before the Act came into force towards interest due before that date can be reopened and readjusted first towards the costs, then towards interest due from 1st October, 1937, and next towards the principal. The word “refund” in S 8 (4) means only repayments in

—Ss. 8 and 9—Debt incurred before 1st October, 1932—Suit on and decree after 1st October, 1932—Scaling down—Starting point—Date of decree or date of debt

When there is a debt incurred before 1st October 1932 which has ripened into a decree after 1st October 1932 the scaling down must be governed by S 8 and not by S 9. When the decree merely enforces the payment of a pre existing debt bearing interest, that pre existing debt must be regarded as the liability which will govern the section to be applied (Madurath and Potanjali Sastri, JJ) RAMASESHAYIA v KUTUMBA RAO I L E (1940) Mad 945-  
52 L W 173 = 1940 M W N 770-  
A.I.R. 1940 Mad 793 = (1940) 2 M L J 235

—Ss 8 (3) and 12—Debt scaled down—Date from which interest is to run

Reading S 8 of Madras Act IV of 1938 as a whole, the date mentioned in sub S (1) is the date up to which all debts falling under that section have to be scaled down, and the balance due after scaling down should carry interest from 1-10-1937, at the rate mentioned in S 12 (Madurath and Potanjali Sastri JJ) SEVUGAN CHETTIAR v RANCAVATHA MUDALIAR, 52 L W. 758 = 1940 M W N 1222-  
(1940) 2 M L J 870

—Ss 8 and 9—Mortgage of 1920—Promissory note in 1937 for interest due under mortgage—Decree in suit on promissory note—Scaling down—Procedure—Debt—If incurred before or after 1932

## MADRAS AGRIC RELIEF ACT (1938) S 8

Where for the interest due on a mortgage of 1929,

pay interest and as the claim represents only interest on the mortgage, the whole claim must be disallowed. It is not necessary for scaling down that the original debt itself must be the subject matter of the proceeding before the Court. The execution of the promissory note for the interest due on the mortgage does not amount to payment of interest on the debt and a fresh advance of the sum as principal under the promissory note (Madurath and Potanjali Sastri, JJ)

1-10-1932

A promissory note dated 23-1-1924 was endorsed over to the plaintiff on 26-1-1933. The plaintiff sued upon it and got a decree both against the original promisor and the endorser. The latter applied under Ss. 8 and 19 of Madras Act IV of 1938, to scale down the decree

—S 8 Expl—Applicability and construction—Renewal or inclusion in fresh document—If to be by the same debtor, See 1939 Dig, Cl. 793 RAMASWAMI CHETTIAR, In re 186 L C 722 = 12 E M 667-  
A.I.R. 1940 Mad. 58.

—S 8, Expl.—Applicability—Debt incurred by member of joint Hindu family for family—Extension of fresh document by another member of family—If renewal of previous debt

Where a member of a joint Hindu family executes a fresh document for a pre-existing liability binding on the family, but incurred on its behalf by another member, such previous debt can be regarded as renewed or included in a fresh document within the meaning of S 8, Explanation, of the Madras Act IV of 1938 as the debtor in each case is the same person, namely, the joint family under the explanation to S 8, it is not necessary that the parties to the first debt and the second debt must be absolutely identical (Madurath and Potanjali Sastri, JJ) DORAIKANNU ODAYAR v VEERASAMI PADAYACHI 52 L W 582 = 1940 M W N 1042-  
(1940) 2 M L J 651

—S 8 Expl—Applicability—Sale of immovable property and mortgage by vendor to mortgagee of vendor as part of same transaction—Mortgage if renewal of or inclusion of pre existing liability

Where a sale of immovable property is in anterior to a fresh mortgage executed by the original mortgagee who had a mortgage

## MADRAS AGRIC. RELIEF ACT (1938), S 8

vendor, but in point of fact, they are both part of a single transaction carried through on the same day, and

vendor's mortgage and that on that ground has been renewed or included in a fresh execution of his own mortgage. The vendee cannot therefore claim under the explanation to S 8 of the Madras Act IV of 1938, to treat his mortgage as a renewal of his vendor's mortgage which he has discharged (*Wadsworth and Patanjali Sastri, JJ*) SESHANNA v

## —S 8

creditor'—*Re*  
*If to be by son*

ber of joint Hindu family—Renewal by fresh document executed by another member—Effect of.

Under the Explanation to S 8 of the Madras Agricultural Relief Act, the renewal of a debt or its inclusion in a fresh document must be by the same debtor, when a member of a joint Hindu family executes a fresh document for a pre-existing liability the family but incurred on its behalf by another, such previous debt can be regarded as included in a fresh document within the meaning of the Explanation to S 8, if the debtor is such a member of the

(1940) 2 M.L.J. 786

—S 8, Expl.—Construction—'Renewed or included in a fresh document'—Meaning of—Debt due by A discharged on debt due by B to same creditor being substituted—If renewal or inclusion

The term 'renewed or included in a fresh document'

## MADRAS AGRIC. RELIEF ACT (1938), S 8.

Where the debt for which a purchaser of mortgaged property is liable is essentially the same debt as the debt

have the debt scaled down on the basis that the mortgage debt for which he has become liable is itself a renewal of an earlier debt in favour of the same creditor (*Wadsworth and Patanjali Sastri, JJ*) VEN-KATAMMAL v RAMASWAMI AYYAR

N 1081=52 L W 607=  
(1940) 2 M L J 685

disto—Person beneficially  
—Mortgage in favour of  
note in favour of son  
'rest due on mortgage—

Decree in favour of B on promissory note—Creditors of same—Procedure for scaling down

For the interest due on a mortgage of 1926 executed in favour of A, a promissory note was executed by the debtor in favour of A's son B, on 12-4-1932. The

favour of sons in discharge of decree—If in favour of same creditor—Right to apply for scaling down on basis of promissory note—Plea that mother was benamidar for sons—If open

Petitioner executed a mortgage in favour of two sons of S (a lady). One of the items of consideration for

**MADRAS AGRIC. RELIEF ACT (1938), S. 8.**

—S. 8, Expl.—“Same creditor”—Renewal to assignee from creditor—If renewal to same creditor, MADRAS AGRICULTURISTS' RELIEF ACT, SS. 3 AND 8. (1940) 2 M.L.J. 1

—S. 8, Expl.—Scope—Procedure—Court—If look only at one renewal or can go behind each successive renewal.

It is not correct to hold that in scaling down a debt under S. 8 of Madras Act IV of 1938, the Court must have regard only to the principal sum advanced under the debt immediately preceding that which forms the

**MADRAS AGRIC. RELIEF ACT (1938), S. 10.**

Where the original debt was not one due from an

S. 3 of the Act, if S. 9 have any application. In other words both the prior debt and the debt sued on must be debts due from an agriculturist, (*Wadsworth and Patanjali Sastri, JJs.*) KRISHNASWAMI AIYAR v. NAGALINGA MUDALIAR. 52 L.W. 140 =

1940 M.W.N. 722 = A.I.R. 1940 Mad. 836 =

ed for arrears of rent is a decree for a debt and not for rent. The decree does not fall under S. 15 of Madras Act IV of 1938, but under Ss. 9 and 19 (*Wadsworth and Patanjali Sastri, JJs.*) RAMADAS REDDIAR v. MUNUSWAMI REDDIAR. 52 L.W. 735 =

1940 M.W.N. 1155 = (1940) 2 M.L.J. 825.

—S. 9—Applicability—Suit on renewed debt—Renewed by agriculturist—Prior debt not due by agriculturist—Right to benefit of S. 9.

require the Court to trace the debt back through various renewals to the principal sum or sums originally advanced and scale it down under S. 8 or S. 9 as the case may be. (*Wadsworth and Patanjali Sastri, JJs.*) CHIDAMBEARAN AIYAR v. MANICKAVASAGAM PILLAI. 52 L.W. 204 = 1940 M.W.N. 800 =

A.I.R. 1940 Mad. 795 = (1940) 2 M.L.J. 232

—S. 10 (2) (1)—Applicability—Usufructuary mortgage without stipulation for any interest—Lease



## MADRAS AGRIC. RELIEF ACT (1938), S. 8.

vendor, but in point of fact, they are both part of a single transaction carried through on the same day, and if he has not been in the market for the same day, then that

## MADRAS AGRIC. RELIEF ACT (1938), S. 8.

Where the debt for which a purchaser of mortgaged property is liable is essentially the same debt as the debt

renewal, and that the principal must be the principal

the execution of his own mortgage. T therefore claim under the explanat. Madras Act IV of 1938, to treat renewal of his vendor's mortgage, w charged. (*Wadsworth and Patanjali SESHANNA v*

—S. 8, creditor"—Ren If to be by iden

ber of joint Hindu family—Renewal by fresh document executed by another member—Effect of.

ditor—Person beneficially—Mortgage in favour of note in favour of son 'rest due on mortgage—

Decree in favour of B on promissory note—Creditors if same—Procedure for scaling down

For the interest due on a mortgage of 1926 executed

no

ie. h

same person, namely, the joint family ("pers

KADARAJAM PILLAI v. KRISHNA- 52 L.W. 595- M.W.N. 1067=(1940) 2 M.L.J. 684.

1—"Same creditor"—Promissory note er—Suit on and decree—Mortgage in

(1940) 2 M.L.

—S. 8, Expl.—Construction—"Renewed or ed in a fresh document"—Meaning of—Debt du discharged on debt due by B to same creditor

1910 M.W.N. 1007=(1940) 2 M.L.J. 517.

—S. 8, Expl.—Mortgage—Purchaser of mortgaged property—Failure to pay—Suit—Compromise decree—Application for scaling down—Basis of scaling down—Renewal—Compromise—If removal of original debt.

renewal of the promissory note debt, and that it was not open to the judgment debtor to raise such a contention for the purpose of the Act. (*Wadsworth and Patanjali Sastri, J.J.*) RAGUPATHI AIVAR v. KRISHNAMACHARIAR. 52 L.W. 673=1940 M.W.N. 1142=(1940) 2 M.L.J. 756

## MADRAS AGRIC. RELIEF ACT (1938), S 8

—S 8, Expl.—'Same creditor'—Renewal to assignee from creditor—If renewal to same creditor See MADRAS AGRICULTURISTS' RELIEF ACT, Ss 3 (v) AND 8 (1940) 2 M L J 553

—S 8 Expl.—Scope—Procedure—Court—If can look only at one renewal or can go behind each successive renewal

It is not correct to hold that in scaling down a debt

under S 9 of the Act. See *IV* 1939 *Mad* 807 = 186 I O 214 = 12 B M 603

—S 8—Applicability—If confined to liabilities under contracts See 1939 Dig Col 793 MOTTAI MEERA v CHINNA SHAIK ABDUL KADIR KOWTHAR 186 I O 214 = 12 B M 603

—Ss 9 and 12—Applicability—Mortgage in 1920

the original notes renewed in the mortgage, that the payments actually appropriated before 1-10-1937 would

the principal remains laid down in S 12 from costs should be scaled Act, *as*, at 5 per cent p and at the decree rate *worth and Patanjali* Sa

PALA RAYANIM DORA 1940 M W N

—Ss 9, 15 and note for arrears of rent or for debt—Scaling

ed rer Ac an M

—S 9—Applicability—Suit on renewed debt—Renewal by agriculturist—Prior debt not due by agriculturist—Right to benefit of S 9

—S 9—Applicability—Suit on renewed debt—Renewal by agriculturist—Prior debt not due by agriculturist—Right to benefit of S 9

## MADRAS AGRIC. RELIEF ACT (1938), S 10

Where the original debt was not one due from an agriculturist, a debtor cannot call in aid S 9 of the Madras Agriculturists' Relief Act on the ground that the debt sued on is in renewal of a prior debt. The prior debt also must fall within the definition of "debt" in S. 3 of the Act, if S 9 have any application. In other words both the prior debt and the debt sued on must be debts due from an agriculturist (*Madworth and Patanjali Sastri* JJ) *Mad* 807 = 186 I O 214 = 12 B M 603

2 L W. 140 =  
Mad 836 =  
M L J 174.  
cop—Interest  
rec—Right of

ted a promote  
In October of  
On 18th November, 1935 interest was calculated up to that date and paid off in full and there was an endorsement to that effect on the promissory note. In a suit in 1938 for the balance of the principal and interest from

52 L W 245 = A.L.B. 1840 Mad. 807 =  
(1940) 2 M L J 185.  
Scope—Debt renewed several  
times back to principal origi-  
nal down—If limited to one

f the Madras  
o that section  
debt is traced  
ly advanced  
he proviso to  
the process of  
y part of the  
be a renewal  
f to be a debt  
down accord  
wal in part or  
comes into  
the mode of

The object  
is plainly to  
rough various  
nally advan  
' as the case  
Sastri. JJ)  
GAN PILLAI  
W N 80C

A.L.B. 1940 Mad. 196 = (1940) 2 M L J

—S 10 (2) (i)—Applicability  
mortgage without stipulation

MADEAS AGRIC. RELIEF ACT (1938), S 10.

MADEAS AGRIC. RELIEF ACT (1938), S 10.

back to mortgagor on condition of payment of annual

by the mortgagors for lands purchased by them from  
 ere was subsequently a partition  
 ors, and afterwards by consent of  
 debt was split up with the result  
 gage was given for Rs. 2,500,  
 rigagors under that  
 . 21-1925. Under this  
 were not the lands  
 1914, but some of

annual purapad of a certain quantity of paddy. The the ancestral properties of the mortgagor. A decree

ment as 'rent or interest.'

under Madras Act IV of 19

scaled down, contending that the two documents

ed in substance to a simple

Invoked the exception

bar of the application.

Held, that the mortgage

be construed as a simple mort

was incompetent as the c

contained in S 10 (2) (i) c

documents must in a case of

part of the same transaction

each according to its terms,

reading the two together, si

different in character and in

Patanjali Sastri, JJ) ABI

MANYA PATTAR.

1940 M W N 1144

(1940) 2 M L J 760

S 10 (2) (ii)—Applicability—Mortgage by vendee

vendee executes a promissory note to the vendor for the  
 unpaid purchase money and the instrument is endorsed

KAMASWAMI NAICKER.

Od L v 100=

1940 M W N 1175—(1940) 2 M L J 827.

S. 10 (2) (ii)—Applicability—Mortgage for

unpaid purchase money—Subsequent mortgage for part

cability—Vendor of mort  
 to discharge mortgage  
 favour of mortgagee—If  
 ~Application for scaling

to X—Registered sale-deed executed by vendor in favour  
 of Y—Y executing a mortgage next day in favour of X  
 to cover the amount due on the promissory note—Liabi-

**MADRAS AGRIC RELIEF ACT (1938), S. 10**

*Idly under—If excluded by S 10 (2) (ii) of Act IV of 1938*

A sale deed in respect of land was executed in favour of X who paid the price to the vendor. But before the registration of the sale deed X entered into an agreement to have the land conveyed by the vendor to Y direct. Accordingly Y paid some cash and executed a promissory note. The mortgage in the promise application to ground that (ii) of Act I

*Held, X*  
no interest with the vendor through the obligation of X, who the amount due from Y will not carry any charge such as is provided for in S 55 (4) of the Transfer of Property Act 71 M L J 347 = 59 Mad 910 and 52 M L J 346 50 M L J 102. The operation of the Act is not excluded by the operation of the Act.  
**VENKATAPY**

**S 10 (4) (iii)—Applicability and construction—Liability, meaning of—If confined to liability to pay primary rate of interest—Interest payable on default under default clause in bond—If to be taken into account**

The word "liability" in S. 10 (2) (iii) of the Madras Agriculturists' Relief Act cannot be construed as referring only to a liability incurred by a borrower who is guilty of no act of default. The liability must mean whatever liability may fasten upon the borrower under the terms of the bond or contract. It cannot be held therefore that the clause deals only with the primary rate of interest charged and that it cannot apply to any rate which is chargeable in case of default. In respect of a mortgage loan under mortgage bond executed in favour of a Nidhi in February 1927, the interest stipulated for in the first instance was only 6½ per cent. But it was payable at the end of every month and if there was default in the payment of interest or subscriptions to the Nidhi further interest was chargeable on both the interest and the amount due for subscriptions. The principal amount borrowed in 1927 was Rs 1500

interest imposed under the contract for payment of interest and subscriptions. The amount worked out at more than 9 per cent. The primary rate was only 6½ per cent. In an application for scaling down.

*Held, that S 10 (2) (iii) could not apply as the interest worked out at more than 9 per cent and that the debtor was entitled to have the debt scaled down under S 8 of the Act, and could make an application under S 23. Where money was borrowed and a larger sum was to be repaid, the excess over the principal must be treated as interest (Aing.) S. SRINIVASA CHARIPU V CONJEEVARAM HODGSONPET DHIRMA RAKSHAKA NIDHI, LTD. 52 L W 432 = 1940 M W N 993 = A I R 1940 Mad. 837 = (1940) 2 M L J 478*

**MADRAS AGRIC RELIEF ACT (1938), S. 14**

**—Ss 11 and 19—Applicability—Compromise decree promising for payment of gross sum in full satisfaction of suit claim and costs—Court's power to reopen and scale down—Allocation of costs**

Ss 11 and 19 of the Madras Act IV of 1938 are applicable only to cases where any specific sum is decreed as costs. Where parties enter into a compromise

**—Ss 11 and 19—Decree—Costs—Interest on costs—Liability to be scaled down**

When there is a decree for costs which forms part of the decree relating to the process laid there is nothing in the decree down operation. *Patanjali Sastri,*

**J J PALANI GOUNDAN V MUTHUSWAMI GOUNDAN**  
52 L W 638 = 1940 M W N 1128 = (1940) 2 M L J 707

**—S 11—Scope—Costs of execution—Right to recover**

S 11 of the Madras Agriculturists' Relief Act, like S 19, relates only to costs as decreed and does not cover costs of execution. *(Wadsworth and Patanjali Sastri, J J) VENKATAPY V RAMASWAMI AYYAR*  
1940 M W N 1081 = 52 L W 607 = (1940) 2 M L J 685

**—S 12—Interest on debt scaled down—Date from which it should be calculated. See MADRAS AGRICULTURISTS' RELIEF ACT, SS 9 AND 12**  
(1910) 2 M L J 185

**—S 14—Applicability and scope—Family debt—Liability of agriculturist and non-agriculturist members—Ascertainment—Family property—If to be split up**

If a debt is a family debt, it must be a family debt with regard to every member of the family, and the members are personally liable for their proportionate share of the debt. It is not necessary that the family property should be split up into individual shares and each individual share be made liable only for its own share of the family debt. *(Harnall J) JAGANNATHA AIVANGAR V SUPPIAH CHETTIAR*  
1910 M W N 754 = 52 L W 219 = A I R 1940 Mad. 797 = (1940) 2 M L J 187.

**—S 14 (b)—Scope—Decree against agriculturist and non agriculturist—Liability of former—If extends to whole decree as scaled down**

In the case of a decree against an agriculturist and non agriculturist, the Court cannot direct the agriculturist to pay the full amount of the decree as scaled down.

**MADRAS AGRIC. RELIEF ACT (1938), S 15.**

S 14(8) of Madras Act IV of 1938, the liability of the agriculturist defendant extends only to his proportional share in the decree which must be scaled down in his favour. (*Wadsworth, J*) **SITARAMAIA v SREERAMAIYA**  
52 L W 479 (1) =  
(1940) 2 M L J 1004

An alienee of the whole of ka  
in a portion of his holding is a

kanomdar includes the land revenue which he has undertaken in the kanom deed to pay on behalf of the jennu. (*Wadsworth and Patanjali Sastri, JJ*)  
**ITTEERI NAMBUKIRI v SANKUNNI NAIR**  
50 L W 727 = 1940 2 M L J 1177 =

**MADRAS AGRIC. RELIEF ACT (1938), S 15**

The relationship between a major inamdar and a minor inamdar cannot be held to be that of landlord and tenant, and the minor inamdar is not a person under a liability to pay any rent to a major inamdar. Where the major inamdar obtains a decree against the minor inamdar in the Civil Court in respect of water cess, etc., alleged to have been paid by the Government on behalf of the latter, S 15

*mortgagee—Latter recognised as landholder—Mortgagee's interest in cer-*

*Estates Land Revenue Act, and in Agriculturists' Relief Act, and in Agriculturists' Relief Act conferred by and Patanjali v GUPALA—2 L W 832 = 2 M L J 883.*

*gnition of the r as the owner "landholder" d Act, and in ultants Relief conferred by and Patanjali v GUPALA—2 L W 832 = 2 M L J 883.*

**S 15—Applicability—Assignee from original lessee—Arrears of rent due for period before assignment—If rent payable by the assignee—Right of latter to apply for wiping out by deposit**

At least one of the assignees

not cease to be rent when he pays it men  
is never personally liable to pay it. An

be in no worse position than the original  
can therefore take advantage of S

(*King, J*) **CHEERU v CHATHU NAM**  
1940 M W N 935 = 1

**S 15—Applicability—"Liable to pay rent"**  
kanom held by farward allotted on partition to tavazhi—  
Right of latter to apply for wiping off arrears of micha  
waram. See **MADRAS AGRICULTURISTS' RELIEF ACT**,  
SS. 3 (11), PROVISOR D AND 15  
(1910) 2 M L J 788

**S 15 and R 6 (1)—Applicability**  
minor inamdar—Water cess, land cess,  
farmer to Government on behalf of minor  
inamdar in respect of—If rent—Applicability  
S 15—Maintainability

**S 15—Applicability—Panayam purappad pay**  
able by usufructuary mortgagee to mortgagor after  
appropriating interest on mortgage amount and pay

**S 15—Applicability—Promissory note for arrears**  
of rent—S  
two years  
MADRAS  
AND 19

**S 15—Arrears of rent for failure prior to**

**MADRAS AGRIC RELIEF ACT (1938), S 15**

Under S. 15 of Act IV of 1938 only arrears of rent payable to a tenant or intermediary could be deemed

**MADRAS AGRIC RELIEF ACT (1938), S 19.**

*Held*, that the nature of an application under S. 19 of the Madras Agriculturists Relief Act was akin to an application for a writ of habeas corpus.

rent (*Wadsworth and Palanjalai Sastri, JJ*)  
AHMAD KOYA : APPU 52 L W 849 =

S 19—Applicability—Suit dismissed before Act  
Appeal—Reversal and decree after Act—Application

indeper  
or cont

NARASIMHA NAYANIM VARU : V. N. S. : 1939  
NAIDU GARU

Relief Act has no  
the Act came into  
passed was before  
the Act Where a suit was dismissed before the Act

S 19—Appeal—Order  
prior to the new rules—Competer

Orders under S 19 of the  
Relief Act cannot be deemed to  
C. P. Code, even when execution

An application under S 19 has to be made to the Court  
which passed the decree and not to the executing Court

It is not  
in any  
will be  
dismissed  
rules pr  
1939  
MAHOM

S 19—Construction and scope—Debt arising  
into decree after Act—If debt liable to be scaled down

[Note  
that the.

S  
of rent—Suit on—Decree—Scaling down—Procedure—  
If decree for rent or for debt See MADRAS AGRICUL-  
TURISTS RELIEF ACT, SS 9, 15 AND 19

(1940) 2 M L J 825.

S 19—Applicability—Pioneer mortgagee im-  
pleaded in suit on first mortgage—Right to apply—Sub

Ss 19 and 20—Death of judgment-debtor just  
before expiry of the sixty days time allowed under S 20  
for applying for scaling down—Legal representative—  
If entitled to file a fresh application for stay under  
S. 20—Procedure.

A judgment debtor against whom a decree was being

S. 19—Application under, to appellate Court—If  
original matter—Civil Procedure Code (V of 1908),  
O 7, R. 10—Applicability

An application under S. 19 of Act IV of 1938  
scaling down a decree passed by an appellate Court was  
dismissed on the ground that the application ought  
have been presented to the Court of first instance  
revision.

Receiver in the insolvency of the judgment debtor—  
Whether judgment-debtor.

the Act  
debtor as  
Code

debtor cannot be a judgment-debtor and

MADRAS AGRIC. RELIEF ACT (1938), S. 19.

scaling down of the decree debt as against him. 13 L.C.

—Ss 19 and 20—Jurisdiction—Mortgage decree for sale—Execution—Sale by Berhampore Sub-Court—Application by judgment debtor under Ss. 19 and 20 before confirmation—Subsequent as separate Province—Mortgage within Jurisdiction of Chitacole Sub by judgment-debtor to latter Court—Jurisdiction of Berhampore Court—Notification of Governor-General of 1-4-1936—Effect of—C. P. Code, O 47 See 1939 Dig, Col 705. *VENKATACHARI v. RAVAMURTHI* 186 I.C.

—S 19—Jurisdiction—Sale in another Court—Decree in—Appeal to appellate Court to scale down competency. A Court hearing an appeal from wherein the plaintiff seeks to set aside a decree of another Court has no jurisdiction to set aside the decree.

—S 19—Jurisdiction—Trial Court—Power to scale down. Appeal by Subordinate Judge.

—S 19—Mortgage decree—Purchaser of equity of redemption at sale in execution of money decree—Right to apply for scaling down mortgage decree. The purchaser of the equity of redemption in mortgaged property at a sale in execution of a money decree against the mortgagor is not bound to accept the mortgagee's offer to purchase the property at a sale in execution of a money decree against the mortgagor.

27th October, 1939, provided an appeal against the orders under S. 19. *Held*, the amended rules cannot have retrospective effect and do not govern the present case. (*Leach, C. J.*)

MADEAS AGRIC. RELIEF ACT (1938), S. 20.

and Krishnaswami Ayyangar, J) CHIDAMBARAM CI

be —S 19—Procedure—Liability created for first time by appellate decree—Application for scaling making application—Declared in the appellate

have the matter decided in the appellate Court in its decree. It is the proper procedure to the appellate Court. *Wadsworth, J.* 413=

—Ss 19 and 23—Sale in execution of mortgage decree—Application by judgment debtor—Qualification for benefits under—Necessity to give notice to pursue mortgagee. Even in respect of a sale of mortgaged properties after 1st October, 1937, it is not enough that the mortgagee has been notified of the mortgaged property.

agriculturist within the proviso to S. 23 notice is necessary and if he is not impleaded and notice has gone only to the decree-holder or auction purchaser, the terms of the proviso are not complied with. (*Wadsworth, J.*) *KUMARASWAMI REDDIAR v. MUTHUGOPAL NAICKER* 52 L.W. 836= 1940 M.W.N. 1257= (1940) 2 M.L.J. 943

—S 20—Applicability—"Debt"—"Debtor"—"Liability"—"Property"—"Partition"—1939 Dig.

AIR 1940 Mad 825=(1940) 2 M.L.J. 234 —S 20—Applicability—Hinda father—Decree against in respect of liability enforceable against family property—Right of son to apply under S 20 See 1939

## MADRAS AGRICULTURAL RELIEF ACT (1938) S 20

Dig, Col 796 VASANTHA RAO SAHIB v NARAYANA SWAMI AYYAR A.I.R. 1940 Mad 95

—S 20—Construction—Period of sixty days—If period of limitation—Expiry of period on holiday—Application filed on re opening day of Court—If in time See 1939 D.G., Col 796 KUMARASWAMI PILLAI v THIRUVENGADATHA IVENGAR 1940 M.W.N. 831—

—S 20—Right to apply under—Puis directed by decree in first mortgagee's suit If debtor—Right of application under S 2 Dig, Col 796 NARAYANACH CHETTIAR

—S 21—Construction and Hindu father in respect of fund against property allotted to son declared insolvent and dividend by son under S 20—Competency 797 VASANTHA RAO SAHIB AYYAR.

—S 21—Scope and object due by another who is not insolvent benefit of scaling down

The object of S 21 of the Act is clearly to prevent a double scaling of an individual. If that debt the scaling down process of the dividends have been paid on the down, it should not be subject to at the instance of the same person the benefit of one process of reduction. There is no reason to refuse these benefits to an entirely different person who has not had the benefit of the insolvency law and who is an agriculturist have his debts scaled down nor under the objects of the the exclusion of the debts tended to the same debts who is not an insolvent

NARAYANA v RAMAYNA

1940 M.W.N. 831—A.I.R. (18)

—Ss 22 to 25—Applicability—

before Act—Application to set aside under O 21 R 69, C. P. Code—Deposit on date when Act in force—Withdrawal by decree holder in full satisfaction—Subsequent application for scaling down—Competency

Petitioner deposited the amount necessary under O 21, R 69, C. P. Code, to set aside a sale and the amount was withdrawn by the decree-holder in full satisfaction. Though the deposit was made on the day when the Madras Act IV of 1938 came into force, an application for scaling down was not made until long after the decree was satisfied.

Held, that Ss 22 to 25 of the Madras Agriculturists'

implied in suit on mortgage—Sale of all properties in one lot—Right of donee to apply to set aside sale—C. P. Code S 2 (10)

K. V. executed a mortgage of eight items of property in favour of the respondent on 6-8-1931. On 9-8-1931 he sold seven of these items to P, and made a gift of the other item to his daughter, the petitioner. The latter sued P in 1934 for recovery of pos-

## MAD BOSTAL SCHOOLS ACT (1926), 7

session of the seven items sold to him alleging that they were sold to him by her father as benamidar for him self. It was found that P was a benamidar purchaser, but on the ground that the petitioner did not prove that he was a benamidar for herself the suit was dismissed. Later, on 24-3-1937, K. V. executed a release deed

1940 M.W.N. 831—A.I.R. 1940 Mad 95 (1940) 2 M.L.J. 749

—S 23—Construction—Notwithstanding the sale

the sale has been agriculturists Relief Act, in the of the section, and induce any new proviso

—S 23—Order under—Revision. See C. P. CODE, S 115 (1940) 2 M.L.J. 709

—S 23—Sale held in execution of decree before 1st October 1937—If can be reopened and scaled down

There is no provision in the Act empowering the Court to reopen a sale held under a decree before the 1st October, 1937 (Ifadworth J.) BASAVAYYA v MANIKYALA RAO 1940 M.W.N. 894— 62 L.W. 387—(1940) 2 M.L.J. 310

—S 27—Certificate by local board—If conclusive

There is nothing in S. 27 of the Madras Agriculturists'

1940 M.W.N. 831—A.I.R. 1940 Mad 95 52 L.W. 430—(1940) 2 M.L.J. 483

## MADRAS BOSTAL SCHOOLS ACT (1926) S 7(2)—Powers of M

—Legality

Before the proceedings are submitted by a Magistrate under S. 7 (1) of the Madras Act, a conviction has to be recorded



## MAD DEBT CONCILIATION ACT (1936) S 4

## MAD DT MUNICIPALITIES ACT (1920), S 61.

S  
in e  
res  
ment of which application has been made, cannot be  
proceeded with until the Board has dismissed the appli-  
cation (1938) 2 M L J 1032, Rel on (*Abdur Rahman*  
*J*) NARAYANAN v. CHETTIAR & CO. (1938) 2 M L J 1032.

—Objective  
than fifty per cent of the debts—Procedure

1936 (*Wadsworth J*) SURYA RAO v. BULLEMA  
1940 M W N 862 = 52 L W 387 =  
A I R 1940 Mad 899 = (1940) 2 M L J 333.

—Successive ap-  
decree on basis  
rent defendants  
See 1939 Dig.

A I R 1940 Mad 31

—S 4 (1)—Insolvent debtor—  
Debt Conciliation Board—Jurisd  
entertain

Insolvency Court has not given  
position is the same whether the app  
the Debt Conciliation Board by the insolvent or by a  
creditor. An insolvency takes away the jurisdiction of  
the Debt Conciliation Board (*Leach C J* and  
*Krishnaswami Ayyangar, J*) DASARADHARAMIA

A I R 1940 Mad 791 = (1940) 2 M L J 233

—S 25—Stay of execution in respect of same debt  
—If can be granted more than once—Application for

similar provision in S 25 (when an application in con-  
the merits) is conclusi-  
t be ordered more than  
he same debt (1939) 2  
NATESA AIVAR v. SIN-  
52 L W 839 =  
(1940) 2 M L J 923

MADRAS DISTRICT MUNICIPALITIES ACT  
(V OF 1920) S 61 (1)—Construction—Drain on  
private property but alongside public street—If vests in  
Municipality—Power of latter in respect of private  
drain

937  
O 21  
A judgment of the court in the case of the insolvent debtor, which can be stayed under  
S 25 of Madras Act XI of 1936

**MAD. DT. MUNICIPALITIES ACT (1920), S. 68.**

pose of draining the private property is not one that vests in the Municipal Council under S. 61 (1). There is no provision in the Act for vesting private drains in Municipal Council, and although the Council has the right to insist that it shall be in proper repair and order, it has no power to impose any burden on the owner of the private drain except in circumstances coming under S. 1 of the Act (*Leach C J and Krishnaswami Ayy*).

—S. 68 (2)—Construction—Contract of value exceeding Rs. 1,000—Sanction of Municipal Council—Necessity for before contract is entered into—Conditions of contract—If to be entered into by Council. *See* 1939 Dig. Col. 800.  
**PALANI DEVASTHANAM** v. **ALAGIRISAMI NAIDU**

—Ss. 81 and 83 (1) (a)—Construction—Power house of Devasthanam—When exempt from property tax—Power house used for supplying electricity to shops and hotels and yielding profits—Effect.

A power house was erected by the Palani Devasthanam on the Hill. The power was used only to light up the Hill and certain shops and a hotel in the vicinity, yielding a profit. It was not

not be used for the purpose. But to claim exemption

—Ss. 93 (1) and 94 A—Trading or carrying on business—Meaning of—Person selling goods in a place—If carries on business there.

A person who sells goods in a particular place must be deemed to be carrying on business in that place within the meaning of S. 93 (1) of the Madras District

alter the character of his transactions. The fact that his agent at the place is required to pay into the treasury at the close of a day's business, the moneys which he has received for the goods sold that day has no bearing on the question. Nor does it make any difference that accounts are kept at the head office. If he sells goods in a particular place, he is carrying on business at that place within the meaning of S. 93. It

**MAD. ESTATES LAND ACT (1908), S. 3.**

would be a different matter if all the contracts for the supply of goods are made at the head office and goods were merely delivered at the place through an agent.

—Application of.

The plaintiff applied to the Madras Municipality for a licence to erect a building for the purpose of a mission. The Municipality refused to issue the licence. The plaintiff issued a notice to the Municipality, and the Municipality refused to comply with the notice. The plaintiff sued the Municipality for damages. The District Municipalities Act as no licence had been obtained. On plaintiff's refusal to accept the notice, the building was demolished by the special officers. The plaintiff sued the Municipality for damages.

*Held*, that S. 216 of the Act applied to the case as the completion of a building as well as the commencement of S. 216, and done because S. 216 done when there

—S. 338—Scope—If excluded by S. 216 in the case of building commenced and completed before the commencement of the Act.

**MADRAS ESTATES LAND ACT (1908), S. 3 (5), 6 and 9—Applicability—Post settlement of grant of—Under tenure with both waras—Grantee to make small payment to grantor—Estate conferred—Grantee—If "landowner"—Tenants under him—If ryots. *See* 1939 Dig. Col. 802. **NARAYANA RAJU v. SURYA NARAYAN**.**

*See* 1940 Mad. 1 = 12 R.F.C. 82 = 70 C.L.J. 441 (P.C.).

—Ss. 3 (7) (ii) and 6—Scope and effect of—"Old waste"—"Ryoti land"—Acquisition of occupancy rights—Test. *See* 1937 Dig. Col. 802. **RAMAYYA v. SATYANARAYANA JAGAPATHI RAJU**. 133 K.C. 231 = 13

—Ss. 3 (11) and 30—Scope—Tenant's right to sue for recovery of land by taking possession—Tenant's right to sue for recovery of land by taking possession—Tenant's right to sue for recovery of land by taking possession.

**MAD. ESTATES LAND ACT (1908), S. 6.**

*freed from liability to landlord—Madras Irrigation and Cess Act, S. 1-A (4)*

It is well-settled that ordinarily if a ryot takes from the village tank for cultivating a second crop holding which is registered as single crop wet land, the landholder is entitled to levy an extra charge. The

in an estate tank, the *solum* of which is vested in the landholder, can on no conceivable theory be said to belong to the Government, and when a tenant uses such water and raises second crop he is liable to pay the landholder for it. The fact that the Government has power under the Madras Irrigation and Cess Act to levy a charge

affected (*Leach, C. J. and Krishnaswami Ayyangar, J.*) MADURA KALLALAGAR DEVASTHANAM v. SUB BIAH ANBALAM I.L.R. (1940) Mad 745=

191 I.C. 34=1940 M.W.N. 498=51 L.W. 81=

A.I.R. 1940 Mad 455=(1940) 1 M.L.J. 160

—(as amended by Act XVIII of 1936), S. 6 (1), Explanation 2—Scope and effect of—Decree for eviction in 1934 unexecuted—Execution after coming into force of amending Act—Plea that owing to acquisition of occupancy rights eviction cannot be effected—If open—Executing Court—Powers of

Where a decree for eviction was passed against

(1). The tenants are entitled to raise this plea in execution and the executing Court ought to give effect to it.

**MAD. ESTATES LAND ACT (1908), S. 125.**

—S 26 (1) "Consideration"—Meaning of See 1939 Dig., Col 804 ZAMINDAR OF KIRLAMPUDI v. SURVAPRAKASA RAO I.L.R. (1940) Mad 149=

189 I.C. 245=13 R.M. 220.

—(as amended in 1934), S. 40 (1)—Construction —Ryot having cash rent for many years varying with

186 I.C. 350=12 R.M. 62b= A.I.R. 1940 Mad 8

—S 77—Fair rent—Fixation—Considerations—Duty of landlord or tenant to contribute to expenses of temple festival—If to be taken into account See 1939 Dig., Col. 804. RANGANAYAKALU NAIDU v. LAKSHMI NARAYANA A.I.R. 1940 Mad 175

—S 77—Scope—Kambattam or homefarm land —Landlord selling kudiwaram right reserving only melwaram—Suit for rent—Jurisdiction of Civil Court. See 1939 Dig, Col 805 KONDAYARAO v. NAG ANNA. 188 I.C. 318=13 R.M. 9=

A.I.R. 1940 Mad 40. of holding— by Village VEERANNA 96 I.C. 470= 12 R.M. 656.

—S 112—Scope—Non compliance—Effect—Ab sence of due notice—Suit to declare invalidity of sale—

## MAD ESTATES LAND ACT (1908), S. 127

LAKS

—If  
in 19  
BY Act

—execu  
—aside—  
C P

—S 172—Construction—

—S 172—Powers of Board of Revenue—Proceed—

conversion rate

—Legality of—  
for fixing of re-  
fixing of rent on cash basis only See 1939 Dig

possession at end of period—Effect—If stopped

the Madras Estates Land Act is to protect the tenant against himself and prevent him from entering into any contract by which he can deprive himself of the protection afforded by the statute (*Venkataramana Rao, J*)  
RAMUDU v SANYASI NAIDU 1940 M W N 1071—  
52 L.W. 629—(1940) 2 M L J 668

—S 187 (1) (a) Country to and to the—  
ment of common  
tenant against u

bound by a court  
order under S  
rent in money  
order of comm  
S 40 no longer  
out to be unfa  
remedy because

(*Lea, C J, J*)  
ZAMIND

PILLAI I.L.R. (1940) Mad 487—188 I.C. 136—  
1940 M W N 333—12 B.M. 802—  
51 L.W. 366—A.I.R. 1940 Mad 379—  
(1940) 1 M L J 391 (F.B.)

—'as amended by Act VII of 1931', S 192—  
Scope—If subject to S 132—C P Code O 21, R 90—  
Applicability, to sale for arrears of rent by revenue  
Court See C P CODE, O 21, R 90  
(1940) 2 M L J 584

## MAD HIGH COURT RULES (O S)

—Scope—Presumption under—If arises or  
ing of gaming instruments See 1939 Dig  
Col 509 KANNIAH MAISTRV v EMPERGR

185 I.C. 385—12 B.M. 565—  
41 Cr L.J. 181  
—S 8—keeper of common gaming house—Ser  
s of—Liability to conviction See 1939 Dig, Col

—S 21—Scope—Inam declared to belong to two  
shares—Suit for partition of inam lands between the  
two—If barred

A suit for partition of inam land between two  
persons whose right to the inam in equal shares has  
already been established is not barred under S 21, of  
the Madras Hereditary Village Offices Act (*Burn, J*)

## MADRAS HIGH COURT RULES (ORIGINAL SIDE)—Practice—English rules of practice—Applicability

It cannot be held that the rules of practice of the  
English Court apply *en bloc* to the Original Side except  
so far as the High Court Rules modify them  
(*C J and Krishnaiah Appayyar, J*) MAN  
MUDALIAR v ANDALAMMAL

I.L.R. (1940) Mad. 625—51 L.W.

**MAD ESTATES LAND ACT (1908), S 6**

*freed from liability to landlord—Madras Irrigation Cess Act S 1 A (4)*

It is well settled that ordinarily if a ryot takes water from the village tank for cultivating a second crop for a holding which is registered as single crop wet land, the landholder is entitled to levy an extra charge. The fact that Government water flowed into the landholder's tank does not mean that the water, when it got there, remains Government water. It mingles with the land lord's water and must be regarded as his water. Water in an estate tank, the *solum* of which is vested in the landholder, can on no conceivable theory be said to belong to the Government, and when a tenant uses such water and raises second crop he is liable to pay the landholder for it. The fact that the Government has power under the Madras Irrigation Cess Act to levy and does levy water cess from the ryot cannot make any difference, the Act as provided by S 1 A (4) leaves the position of the landholder and the tenant *inter se* entirely unaffected. (*Leach, C J and Krishnaswami Ayyangar J*) MADURA KALLALAGAR DEVASTHANAM v. SUB BIAH AMBALAM I.L.R. (1940) Mad 745= 191 IC 34=1940 M W N 498=51 L W 81= A I R 1940 Mad 455=(1940) I M L J 160

—(as amended by Act XVIII of 1936), S 6 (1) Explanation 2—Scope and effect of—Decree for eviction in 1934 unexecuted—Execution after coming into force of amending Act—Plea that owing to acquisition of occupancy rights eviction cannot be effected—If open—Executing Court—Powers

Where a decree for eviction

cannot execute his decree for who cannot be evicted by reason

(1) The tenants are entitled to raise this plea in execution and the executing Court ought to give effect to it.

—B 13—Scope and effect—Suit for rent in Civil Court—Subsequent passing of Amending Act on jurisdiction of Court—Land being of Court to return plaint

In a suit for rent in a Civil Court issues and on a revision application to the High

bound to stop the case and return the plaint for presenta

**MAD ESTATES LAND ACT (1908), S 125,**

—S 26 (1)—Applicability—Permanent lease See 1939 Dig, Col 803 ZAMINDAR OF KIRLAMPUDI v. SURYAPRAKASA RAO I.L.R. (1940) Mad 149= 189 IC 245=13 R M, 220

—S 26 (1)—Arrangement evidencing remission of rent—Validity of—Burden of proof See 1939 Dig, Col 803 ZAMINDAR OF KIRLAMPUDI v. SURYAPRAKASA RAO I.L.R. (1940) Mad 149= 189 IC 245=13 R M 220

—S 26 (1)—“Consideration”—Meaning of See 1939 Dig, Col 804 ZAMINDAR OF KIRLAMPUDI v. SURYAPRAKASA RAO I.L.R. (1940) Mad 149= 189 IC 245=13 R M 220.

—(as amended in 1934), S 40 (1)—Construction—Ryot paying cash rent for many years varying with the nature of crops raised—Right to apply for commutation to definite money rent. See 1939 Dig, Col 804 ZAMINDAR OF UDAYARPALAYAM v. SUDAI UDAYAN 186 IC 350=12 R M 625= A I R 1940 Mad 8

—S 77—Fair rent—Fixation—Considerations—Duty of landlord or tenant to contribute to expenses of temple festival—If to be taken into account See 1939 Dig, Col 804 RANGANAVAKALU NAIDU v. LAKSHMI NARAYANA A.I.R 1940 Mad 175

—S 77—Scope—Kambattam or homefarm land—Landlord selling kudiwaram right reserving only melwaram—Suit for rent—Jurisdiction of Civil Court

—S 112—Scope—Non compliance—Effect—Absence of due notice—Suit to declare invalidity of sale—

person who has an interest in the land affected by the

d whose  
be held  
the Act  
ANNA-  
N 595=  
d 439=  
J 148  
Act to  
mbrance

Estates

Land Act does not become an encumbrance created

## MAD H R ENDOWMENTS ACT (1927) S 62

confined to an order of resumption (*Leach, C J and Krishnarwami Aiyangar J*) KALLALAGAR DEVAS

—Finding of ml  
Dig Col 810  
COMMISSIONER

—Ss 63 ar  
—Power of Cou  
S 63 of the M  
Act gives no po  
scheme when the

any time The Court has power to settle a scheme but it must be a scheme which has first been framed by the Court There is no res duary power in the Court to frame a scheme (*Leach C J and Krishnarwami Aiyangar J*) PICHU AYYANGAR v RAMANUJA JEER SWAMIGAL.

ILLR (1940) Mad 801—  
1940 M W N 575—51 L W 727—

A I R 1940 Mad 756—(1940) 1 M L J 882

## MAD IRRIGATION CESS ACT (1865), S 1

adjudicated upon by Civil Court—If can be relied on as reasons for action See 1939 D R Col 811 ZAMORIN

## MENTS BOARD

A I R 1940 Mad 216

—S 73—Scope—Excepted temple—Scheme—Jurisdiction of Court—Suit for removal of trustee and appointment of new trustee—Compromise providing for administrative ration—Decree in terms of—Legality—Absence of objection to jurisdiction—Objection in appeal—If barred

S 73 of the Madras Hindu Religious Endowments

Board which has settled a scheme in a judicial capacity

## MADEAS IRRIGATION CESS ACT (VII OF

temple being an excepted temple The consent given must be deemed to be given in the trustee's personal capacity and cannot operate as an estoppel against the temple of which he is a trustee or even as against the trustee himself when suing or being sued in his capacity as trustee (*Pandurangh A wad Akbar Rahman JJ*) BALA VENKATARAMA CHETTIAR

OUS ENDOWMENTS BOARD

—(as amended in 1935), 1  
—Procedate under—When to

variable not by reason of the detriment to others caused by taking the water but by reason of the source from which the water is taken It cannot be held that the impounding of water on a person's own land flowing on to that land from the registered source in the authorised manner creates a different or additional source other

In order  
settled  
there has



## MAD LOCAL BOARDS ACT (1920), S 193

—S 193 (3)—Scope—Refusal to renew licence—*Ultra vires*

S 193 (3) of the Local Boards Act empowers the pre

permission to instal rice mill—Sufficiency—Installation without obtaining permission—Offence

The provision in S 194 (3) of the Local Boards Act is not complied with when a person who wishes to instal a rice mill merely applies for permission and then installs the engine. If he installs the engine without obtaining the permission he is guilty of an offence under S 194 (*Lakshmana Rao J*). **RAHIM SAHIB v FEMPEROR** 52 L W 370 = 1910 M W N 874

—S 223—Limitation—Installation of rice mill without permission—Prosecution within 12 months—If barred

Under the proviso to S 223 of the Madras Local

## MAD. MARUMAKATHAYAM ACT (1933), S. 5.

were alleged to have abetted the offence committed by the first accused

*Held*, (1) that the accused who were members of the

**MADRAS MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (I OF 1900), S 19—Scope—Stipulation in Kanom that compensation was to be paid at specified rates—If covenant running with the land—Sub Kanom by Kanomdar after Act—Sub Kanomdar taking without notice of stipulation—If bound by same—T P Act, S 40**

A contract entered into between a Jenmi and Kanomdar and embodied in the Kanom deed, under which the Jenmi is only to pay compensation for improvements at specified rates cannot be said to be a covenant running with the land, falling under S 40, T P Act. It cannot be placed any higher than a

criminal duty—Charge of continuing in office as president beyond term and failure to hand over fund—San

(1940) 1 M L J 165

to hand over the panchayat fund to the newly elected

—Deposit of arrears of rent—Scaling down by applica

Panchayat Board of abatement of such offences against non members—Sanction—Necessity

Seven persons were charged under Ss. 208 (2) and (3) and 210 of the Madras Local Boards Act. Four of them were members of the Panchayat Board and were charged with acts performed by them while purporting to act in the discharge of their duties as members. The remaining three were not members of the Board and

than the ground of non-payment of federal tax (*Pandurang Row and Achar Rahman JJ*). **F V POKKER v A KUNHEETHUTHI** 52 L W 617 = 1910 M W N 1013 = (1940) 2 M L J 103

**MADRAS MARUMAKATHAYAM ACT (**

**OF 1933), S 5—Applicability and scope—If**

under—If can be got rid of by mere declaration part of an individual of intent on not to be



**MAD MARUMAKKATHAYAM ACT (1933) S 38**

Malabar Law See 1939 Dig, Col 815 VENKATA  
RAMAN v JANAKI 188 I C 826 = 13 R M 84

—Ss 38 and 43—Relative scope—Application  
under S 43 for registration of tarwad as impartible—  
Subsequent suit for partition by member under S 38—  
Effect—Order of registration—Legality—Lis pendens  
—Applicability.

On 15 8 1933 certain members of a Marumakka-  
thayam tarwad representing a two-thirds majority,

thavazhi or the  
the ground of  
tration under C  
suit for partiti  
of the other m  
tration under S  
order registra  
was therefore  
of lis pendens  
that the applic  
render the  
nothing in C  
partition give  
tarwad remained unregistered (*Lea h C I and Krish-*  
*narayami Ayyingar, J*) MADHA  
PAN NAYAR 52 L W 721 = 1E

—S 43—Scope—Application  
suit under S 38 for partition—I  
registration—Legality and effect

MARRUMAKKATHAYAM ACT, SS 38 AND 43  
(1940) 2 M L J 791

—S 43 (4)—'Tarwad'—If includes thavazhi  
within tarwad—Tarwad registered as impartible—  
Tavazhis within—If also become impartible See 1939  
Dig, Col 816 KUNHILAKSHMI AMMA v KRISHNA  
MENON 186 I C 593 = 12 R M 659

**MADRA  
ACT (II  
rollers  
repairs**

tion and  
MADRA  
COUNCI

—Charge of using car as goods vehicle—Conviction  
—Essentials for

**MAD PREVEN OF ADULT. ACT (1918), S 5**

GOWDER v EMPEROR, 52 L W 344 =  
1940 M W N 804 (1)

**MADEAS MOTOR VEHICLE RULES R 236—**  
Scope—Vehicle registered in one district—Permit  
extended by Central Road Traffic Board to another  
district—Power of Board to impose conditions on such  
extension

Under R 236 of the Motor Vehicles Rules (Road  
Traffic Code) the Central Road Traffic Board has power

illom who becomes insolvent is liable to be sold in

185 I C 804 = 13 R M 100

A I R 1940 Mad 175

—S 5 (1)(b)—Essentials of offence—Hotel keeper  
storing adulterated ghee for preparation of edibles in  
his hotel—Offence

Where a hotel keeper stores adulterated ghee for the  
preparation of eatables in his restaurant, it cannot be  
said that the ghee is stored or offered for sale, and he

—S 5 (1)(d)—Offence—Sample of milk found to  
be below standard of purity prescribed—No indication  
of violation  
—In re  
of 521  
d effe  
batter

## MADRAS PROHIBITION ACT (1937), S 4

## MAD. VILLAGE COURTS ACT (1889) S 32

## MADRAS PROHIBITION ACT

S 4 (1) (a)—Offence—Ignorance of  
of introduction or enforcement of  
ground of exemption from conviction

assisting in the management  
be convicted under S 5 (1)  
a Rao J) MONONMANI  
190 IC 655-52 L W 67=  
160-1910 M W N 599 (9)

—A document of title—Right to resume trees from  
original grantee and to grant them to another.

Tree pattas granted by the Government to a person in  
respect of trees on vacant land give the grantee a right  
to enjoy the usufruct of the trees. But the pattas are  
liable to cancellation at the end of the year or at three  
months' notice. The Government have a right to resume  
the trees and grant them to any one else who comes to

Patanjali Sastri, JJ) SIVAPRASAD SOWCAR v  
NARASIMHAMURTHI ILR (1940) Mad 501=  
187 IC 321-12 B M 704-1940 M W N 41=  
51 L W 73-A IR 1940 Mad 187=  
(1940) 1 M L J 79 (F B)

—S 14—Suit under—Parties—Government—If  
necessary or proper party

## MADRAS REVENUE RECOVERY ACT (1904)

S 58—Scope—  
grant declaration as to a

Where the plaintiff in  
his land has been wrong  
authorities and that there

INDIA: VENKATA NARASIMHA RAO BAHADUR  
1940 M W N 418-51 L W 604=  
A IR 1940 Mad 620-(1940) 1 M L J 690

any question as to the amount of the assessment made.  
It will be clearly improper for a Civil Court to give a  
declaration which will have the effect of circumventing  
the provisions of S. 58. (Hormu, J) VENKATSWARA  
SASTRI: SECRETARY OF STATE 51 L W 540=  
1940 M W N 412-A IR 1940 Mad 592=  
(1940) 1 M L J 704

MADRAS SUPPRESSION OF IMMORAL TRAF  
FIC ACT (V OF 1935), Ss 5(1) and 8 A (1)—  
Applicability—Fraudulent relation of brothel kept used  
for prostitution—Liability to conviction—Conditions

day the plaintiff  
the suit for de-  
32 of the Madras  
prepared to do  
pone of the suit on the merits. The plaintiff then filed  
a petition before the Panchayat Court which had  
succeeded to the jurisdiction of the Panchayat Court  
to set aside the decree of the lower court passed in default  
of appearance, set aside the decree and restored the  
The defendant filed an application under S. 73 of  
the Act before the District Munsif, who held that the  
order of restoration of the suit was without jurisdiction  
and quashed the order acting under S. 73. The plaintiff  
applied to the High Court to set aside

**MAD MARAMAKKATHAYAM ACT (1933) S 38.**

Malabar Law See 1939 Dig, Col 815 VENKATA  
 RAMAN v JANAKI 188 IC 826=13 RM 84.

—Ss 38 and 43—Relative scope—Application  
 under S 43 for registration of tarwad as impartible—  
 Subsequent suit for partition by member under S 38—  
 Effect—Order of registration—Legality—Lis pendens  
 —Applicability.

On 15-8-1933 certain members of a Maramakka-

**MAD PREVEN OF ADULT. ACT (1918), S 5**

GOWDER v EMPEROR. 52 LW 314=  
 1940 M WN 804 (1)

**MADRAS MOTOR VEHICLE RULES R 236—**

Scope—Vehicle registered in one district—Permit  
 extended by Central Road Traffic Board to another  
 district—Power of Board to impose conditions on such  
 extension

Under R 236 of the Motor Vehicles Rules (Road

render the suit incompetent because there was  
 nothing in Chapter VII which prevented the right to  
 partition given in Ch VI being exercised while the  
 tarwad remained in the hands of the members of the  
 tarwad. Ayyang.  
 PAN NAYAR

—S 43—Scope—Application  
 suit under S 38 for partition—  
 registration—Legality and effect  
 MARRUMAKKATHAYAM ACT, SS

(1940) 2 MLJ 791

—S 43 (4)—Tarwad—  
 within tarwad—Tarwad registered  
 Tarwad within—If also become in  
 Dig, Col 816 KUNHILAKSHMI  
 MENON. 186 IC 600=14 M 600

**MADRAS MOTOR VEHICLES  
 ACT (III OF 1931), S 2—Motor  
 rollers of the Madras Corporation u**

—S 5 (1)(b)—Essentials of offence—Hotel keeper  
 of edibles in

ghee for the  
 , it cannot be

—S 5 (1)(b)—Essentials of offence—Hotel keeper  
 of edibles in

for sale  
 (1) (b) of  
 ct Eat a  
 ted under

ghee for sale (Lakshmana Rao J) ANANTHA  
 NARAYANA IYER, In re 52 LW 893=  
 1940 M WN 1242

—S 7—Motor Vehicles Rules, Ar 4 (30) and 138  
 —Charge of using car as goods vehicle—Conviction

**MADEAS PROHIBITION ACT (1937), S. 4.**

company—Extra moisture getting admixed in process of manufacture—Consent on for sale of bottles for sale of

of introduction or enforcement of prohibition—If a ground of exemption from conviction

The ignorance of the accused of the fact of introduction or enforcement of prohibition in place of the offence, is no excuse, ground for not convicting him under Prohibition Act. (*Lakshman Rao*,

**ANMAL v EMPEROR** 190 I.C. 526—13 E.M. 431—52 L.W. 64—41 Cr.L.J. 938—

1940 M.W.N. 529 (1)—A.I.R. 1940 Mad 816

—S 4 (1) (a) and (g)—Separate sentences—

Legality See 1939 Dig.

**DAN, In re**

**MADRAS REVENUE**

**ORDERS Order No**

—If document of title—

original grantee and to grant them to another.

Tree patta granted by the Government to a person in respect of trees on vacant land give the grantee a right to enjoy the usufruct of the trees. But the patta is liable to cancellation at the end of the year or at three months' notice. The Government have a right to resume the trees and grant them to any one else who comes to

patta in being more in the nature of a lease (*Horwill, J.*) **SECRETARY OF STATE FOR INDIA v HUSSAIN SAHEB**

1940 M.W.N. 573—52 L.W. 205—

A.I.R. 1940 Mad 783—(1940) 2 M.L.J. 13

his land has been wrongly estimated by the revenue authorities and that therefore they arrived at a wrong figure in regard to the assessment due by him. S. 58 of the Revenue Recovery Act is a bar to the Civil Court considering the question. In disputing the area of his land the plaintiff is disputing the amount of assessment. The action does not merely prohibit the passing of a decree with regard to assessment, but also prohibits a Civil Court from taking into consideration or deciding any question as to the amount of the assessment fixed. It will be clearly improper for a Civil Court to give a declaration which will have the effect of circumventing the provisions of S. 58. (*Horwill, J.*) **VENKATSWARA SASTRI v SECRETARY OF STATE**

51 L.W. 540—

1940 M.W.N. 412—A.I.R. 1940 Mad 692—

(1940) 1 M.L.J. 704

**MADRAS SUPPRESSION OF IMMORAL TRAFFIC ACT (V OF 1933), Ss. 6(1) and 8-A (1)—**

Applicability—Female relation of brothel keeper used for prostitution—Liability to conviction—Conf. nos.

**MAD. VILLAGE COURTS ACT (1889), S. 32.**

A person who is keeping a brothel and living on the

or 8 A (1).  
**ANMAL v EM**

**NDARIES ACT**  
—Effect of Survey of unsuccessul

party whether affected by decision of Survey Officer

An order of the Survey Officer under S. 11 or the Appellate authority under S. 12 of Survey and Boundaries Act (IV of 1897) in itself has not the effect of causing

adverse possession held to preclude his making

make up the period of Limitation Act to complete

*narasami Ayyangar and*

**Patanjali Sastri, J.J.) SIVAPRASAD SOWCAR v.**

**NARASIMHAMURTHI** 1 L.R. (1940) Mad. 501—

187 I.C. 321—12 E.M. 704—1940 M.W.N. 41—

51 L.W. 73—A.I.R. 1940 Mad. 187—

(1940) 1 M.L.J. 79 (F.B.)

—S 14—Suit under—Parties—Government—If

necessary or proper party

and if impleaded would be entitled to costs from the plaintiff (*Horwill, J.*) **SECRETARY OF STATE FOR INDIA v VENKATA NARASIMHA RAO RAHAUDUR**

1940 M.W.N. 418—51 L.W. 604—

A.I.R. 1940 Mad. 620—(1940) 1 M.L.J. 690

sitting and and for restoration of suit kept in cooling Court—Order sitting and dismissal and restoring suit—Order of Mannif quashing same—If justified

A Panchayat Court tried a suit on 12-1-1937 in the presence of both parties and adjourned it to 14-1-1937 for further evidence. On that day the plaintiff was absent, but instead of dismissing the suit for default, as he should have done under S. 32 of the Madras Village Courts Act, the Village Court purported to dispose of the suit on the merits. The plaintiff then filed a petition before the Panchayat Court which had succeeded to the jurisdiction of the Panchayat Court to set aside the decree of the latter passed in default.

A Court held that the plaintiff had good cause for non-appearance, set aside the decree and restored the suit. The defendant filed an application under S. 73 of the Act before the District Magistrate, who held that the order of restoration of the suit was without jurisdiction and quashed the order acting under S. 73. The plaintiff applied to the High Court in revision.

MAD VILLAGE COURTS ACT (1889), S 73

*Held*, that the disposal of the suit by the Panchayat Court A was a disposal on the merits and the remedy of the defendant was by way of an application to the District Munsif to quash the order that was passed without jurisdiction. The order of the Panchayat Court A was not a lawful order and could not be regarded as one passed in review of the order passed by the Court A.

MAHOMEDAN LAW.

Both on general principles and on the balance of authority the correct view appears to be that a suit by a creditor against one Mahomedan heir cannot bind the other heirs. (*Pollock, J.*)  
**SULEMAN v ABDUL SHAKOOR**

188 I.C. 292=12 R.N. 328=  
1939 N.L.J. 577=A.I.R. 1940 Nag. 99

e—Talak—When takes effect *Ser* 1939  
I. ASMAT ULLAH v. KHATUNNISSA.  
I.L.B. (1939) All 763.

debt — Nature of—Proper remedy of  
itor

- Dower
- Gift
- Guardianship
- Marriage
- Minor
- Mosque.
- Pre-emption
- Religious office
- Succession
- Wakf.
- Will.

Administration—Estate of deceased—Payment out of—Order of priority

Under Mahomedan Law, the estate of a deceased Mahomedan is to be applied successively in payment of (1) his funeral expenses and death-bed charges, (2) ex

ing the dower a declaration by the husband is quite sufficient under the Mahomedan Law. (*Abdul Rashid, J.*)  
**CHAN PIR v FAKAR SHAH.**  
189 I.C. 725=13 R.L. 104=A.I.R. 1940 Lah. 104.

—Dower—Lien—Wife's right to retain husband's property—When arises

Under Mahomedan Law, the wife's right to retention of the husband's property in lieu of dower debt arises for the first time on the termination of the marriage either by the death of the husband or by divorce. There is no such right during the continuance of the marriage, (*Akram, J.*)  
**ASIA KHATUN v. AMARENDRA NATH.**  
44 C.W.N. 586=71 C.L.J. 591=  
A.I.R. 1940 Cal. 578.

—Dower — Sunnis governed by Hanafi law—  
Divorce of wife before consummation of marriage—

Applicability—Cutchi Memon—Will by—Law

tions—If  
1939 Dig  
\OONU

the husb  
DAS v I

Co-heirs—Right of representation—Suit against one—If binds all

(1940) 2 M.L.J. 315.

—Dower—Widow in possession in lieu of dower—  
Nature of her right.

The right of a Mahomedan widow who is in possession of the property of her deceased husband to retain pos-

—Dower—Widow in possession in lieu of—Rights of—Transferred from widow—Position of.

## MAHOMEDAN LAW.

1940 R D 25=1940 A W R (B R) 48

*Gift—Delivery of possession—Constructive delivery—Sufficiency*

According to Mahomedan Law, actual delivery of possession is not the donee is out of very is sufficient (I  
 MANTALI 18

1939 N L J

*Gift—Delivery of possession—Necessity for—*

registered deed does not show that possession was not given to the donee where it is so expressly stated in the deed (*Sukhdonarain, J*) *MST JIVA v RANJAN-SHAH*  
 1940 Mar L R 60 (CIV)

*Gift—Delivery of possession—Rule as to*

se  
 m"  
 If he is making a voluntary conveyance of his property the law requires that he should not be compelled to complete the transaction unless he has done everything in his power to make it final and conclusive. But this rule does not apply when the donor supports the transaction and the dispute is not between the donor and the donee or one claiming through either but between the donee and a stranger (*Bose, J*) *HALIMBI v RAHMATALI*

188 I C 181=12 R N 321-

1939 N L J 573=ATR 1940 Nag 70

*Gift—Essentials of validity—Delivery of possession—Necessity—False statement of donor in writing unregistered—Sufficiency*

To constitute a valid gift in or out under the Mahomedan Law three conditions are necessary (1) manifestation of the wish to give on the part of the donor.

possession or even of an intention to delivery of possession, and the keys of the house alleged to be gifted remain with the donor and not delivered to the donee and there is also no reliable evidence that the tenants of the house were told to pay rents to the donee or that he ever collected rents or managed the property in his own name, a bare statement by the donor referred to writing but not registered purporting to make a gift of the house does not constitute a valid gift (*Datta J C*)

*Gift—Validity—Delivery of possession—Necessity—Gift by Saral Behra widow to daughter—*

A. D. 1940-26

## MAHOMEDAN LAW

*Gift—Validity—Gift in futuro*

Under the Mahomedan Law a gift in futuro is void. Immediate possession is essential for a gift. If the

*Guardianship—Alienation for maintenance by Minor, if liable to restore benefit.*

e a Mahomedan mother executed a mortgage on behalf as well as on behalf of her minor son for maintenance of the minor the transaction is for the benefit of the minor and he cannot

*minor's property*

According to the Hanafi School of Mahomedan Law,

tally unfit to act as a guardian of a minor's property. The position of a mother is no better in law than that of a mere stranger or intermeddler so far as the immovable property is concerned. Not only a transfer of minor's interest in such property is forbidden without the direct permission of the Court but even an encumbrance is not protected against a claim by or on behalf of a minor (*Mohammad Ahmad Khan C J and Birds, J*) *ACHAR HOSAIN v VAHIA HOSAIN*

183 I C 21

*Marriage—Discretion—Accusation of adultery—*

A I R 1940 Cal 95

*Marriage—How effected—Minor girl*

According to Mahomedan Law a girl becomes major for the purposes of marriage when she reaches the age of puberty, which is presumed to be the age of 15 years. When a girl is minor it is permissible in Mahomedan Law that her father or grandfather or other paternal relations should give her away. The marriage is valid and is called a *nikah* all the same. Such *nikah* also requires two adult witnesses (*M v Ahmad, J*) *MST GHULAM ALFARA HIRI v MOHAMMAD SHAH*  
 1939 Pesh 29=ATR 1940 Pesh 2

*How effected—Procedure*

Mahomedan Law it is absolutely necessary that some one on the behalf of the minor and some one on her behalf should agree to witness the two adult witnesses. As a *panda* in India it is customary to send

**MAHOMEDAN LAW.**

of the women to her inside the house accompanied by two witnesses. The relation asks the girl within the hearing of the witnesses whether she authorises him to agree to the marriage on her behalf for the dower money offered by the husband. He explains to her the detail of the dower proposed. When the girl says 'yes' or signifies her consent by some other method the three

agrees to the marriage on payment of the specified dower. The relation says 'yes' present there so that if the Mullah should question them as to whether duly authorised agent of the girl have said 'yes' the Mullah reads the scriptures and the

—*Marriage—Option of puberty*  
*Marriage—When to manifest disadvantage*

An option of repudiation exists if the manifest disadvantage of the finds that the husband to whom her father is a person whose blemishes, it can and should be

**AIR 1940 All 60**  
 —*Marriage—Restitution of conjugal rights—Suit by husband—Non payment of prompt dower as defence—Proper decree*

Under the Hanafi Law, the wife is entitled, even after consummation of the marriage, to restitution of conjugal rights, on payment of prompt dower, if she has not received it. But not otherwise. Acting with a previous day

**18810 130**  
 —*Marriage—Shafii—Marriage of adult virgin—Consent of bride—Necessity for validity of marriage—See 1939 Dig, Col 825 SAYAD MOHIUDDIN v KHATIJABI 18510 330=12 BB 236*

—*Marriage—Validity—Minor—Marriage contracted by remote guardian in presence of nearer one—Termination of such marriage after consummation*

**MAHOMEDAN LAW**

The rule of Mahomedan Law undoubtedly is that when a guardian more remote marries a minor boy or girl when the nearer one is present, the validity of the marriage is dependent upon the latter's ratification and consent. But this rule contemplates a case where the boy or girl is given in marriage by a person who in order of priority comes immediately after the guardian at that time, and it cannot apply where as between the nearer guardian and one who actually disposes of the minor in marriage there are other relations who have preferential claims to guardianship. When a marriage is contracted on behalf of a minor by a remote guardian when a

**ABNAL KASEM v ILR (1940) 1 Cal 401=13 RC 4=44 CWN 552= AIR 1940 Cal 251**  
 guardian—Lease by, of minor—Validity and enforceability for use and occupation—**AIR 1940**

Such a lease is the minor. But the lease he can, or compensation who cannot sue for S 70 of the

for work done which (Dist, JC and Lobo, J) **ULLAH v CHOITHRAM=190 IC 253=13 RS 56**  
 guardian—Powers of alienation

A person who has no legal right to interfere with or manage a Mahomedan minor's immovable property cannot validly alienate it and give to a third party a good

and inconvenient besides being **C.J. and Venkataranga Iyengar, SHRI CHAND CO v MAHOMED 45 Mys HCR 132=18 Mys LJ 246**

liability of fact—Powers of—Mortgage to pay off decree on mortgage guardian—Validity against S 68—Specific Relief Act S 41 1939 Dig Col 826 K. N. H. M. 180 IC 476=13 RM 288

members carrying on business after father's death—Liability of minor member—Utilization of minor's assets in business—Minor maintained out of income of business—Effect—If makes minor a partner in business See 1939 Dig Col 827 AHMAD IBRAHIM SAHIB v MEYVAPPA CHETTIAR **AIR 1940 Mad 235**

—*Mosque—Mutawallis surrendering functions of mutawallis to committee but continuing as pesh imam—*

## MAHOMEDAN LAW.

*Committee exercising general supervision over imam—Power of dismissal.*

mosque, and continues as a *qash imam* of the mosque and is paid a salary by the committee, the surrender of the functions of the mutawalli to the committee does invest the committee with a power of *qash imam*, which he as mutawalli although the committee exercises a over him along with other servan (*Wadsworth and Ven*)  
HAMEED MARAKA  
SAHIB, 1

*Mosque—Sue by, as artificial person—If can be brought.*

The question whether a British Indian Court will recognize a mosque as having a *locus standi in judicio* is a question of procedure. In British India the Courts do

*Pre-emption—Ceremonies—Talak-i-shahad—Omission to invoke witnesses—If fatal*

The right of pre-emption is *strictissimi juris* and any defect or irregularity in complying with the requirements of the law would defeat that right. Accordingly the

sary for the pre-emptor to refer to the *talak-i-shahad* or the first demand. This is an essential part of the ceremony and if it is shown that this was not complied with, it would be fatal to the claim for pre-emption (*Mathura f*) DILLIUM R. SAHIBUDIN  
44 C.W.N. 220

*Religious off—Succession—Right of female—Aman—Mujavarti—Woman—If can hold* See 1939 D.G. Cal 827. HUSSAINI R. SAHIB KHAIRUDIN  
185 I.O. 675—12 E.R. 265

*Succession—Exclusion from—Murderer and his descendants*

A person who has murdered another person is excluded from inheriting the property of the victim as also are the murderer's legal descendants. (*Aman, J.C.* and

## MAHOMEDAN LAW.

*Mir Ahmad, J*) MUZAFFAR SARFRAZ v. RAHIM JANA. 180 I.C. 427—A.I.R. 1940 Pesh 21

attract the rule it is not necessary that the murder should have been committed, with the object of getting the murdered man's property. Although the fact that a

KHAN GUL KHAN v.  
I.C. 851—13 R.L. 117—  
—A.I.R. 1910 Lah 172.  
on—Preferential right  
over widow of fourth degree collateral

42 P.L.R. 14—A.I.R. 1940 Lah 177.

property in any way he likes, the disposition must be by way of a valid wakf. True, when he makes the wakf he will have to specify the objects of the wakf with reasonable certainty or the wakf will be void for uncertainty. But the contract to make a wakf would not be invalid because the terms of the proposed wakf are not mentioned in the contract. (*Henderson and Sen, J.*)  
MAHOMED ALI v. DINESH CHANDRA KOY.

I.L.R. (1910) 2 Cal. 189—71 C.L.J. 432—  
44 C.W.N. 718—A.I.R. 1910 Cal 417.  
—Wakf—Constitution of—Use of term wakf, if necessary—Dedication, if necessary See 1939 D.G. Col. 828 HAIDER HUSAIN v. SHAMA PRASAD  
15 Luck. 20—A.I.R. 1910 Oudh 18

—Wakf—Creation—Deed falling in great part as  
as valid testamentary  
of 25. ARHULIL  
126 I.O. 472—  
12 E.S. 197

—Wakf—Creation of—Essential—Property, if  
must belong to wakf at time of dedication.

Under Mahomedan Law, the property dedicated by way of wakf must belong to the wakf at the time of dedication (*Henderson and Sen, J.*) MAHAJIMATI ALI v. DINESH CHANDRA KOY.

I.L.R. (1910) 2 Cal. 189—71 C.L.J. 432—  
44 C.W.N. 718—A.I.R. 1910 Cal 417

—Wakf—Dedication—Proof

Wakf implies dedication by a person of his or the Mahomedan taluk of any property for charity, or for religious or pious purposes, or for an object of public utility. Wakf property is subject to certain rare exceptions inalienable, and a suit for a declaration of property belongs to a wakf can be brought by medians interested in the wakf. In order to establish the necessary dedication must a way of Lapse of time from the dedication is sufficient to establish dedication by law.



## MAHOMEDAN LAW

may be established by evidence of user. (*Lobo J C*)

## MAHOMEDAN LAW

BADAR DIN.

188 I C 877=13 R L 55=

1940 A W R (P C) 90  
 Wakf—Matawali—Appointment of—District Judge as Kazi—Power of to appoint a Matawali—Proceedings—Power to decide right to wakf—Procedure

ZOHRA v BIBI HAB

12 R P 447=6 B R 282=A I R 1940 Pat 9

Wakf—Private ownership—Permissibility

Private ownership of a plot is incompatible with

12 R S 233=A I R 1940 Sind 43

Wakf—Provision for annuity—Wakf not valid—Charge if created for payment of annuity

Wakf—Reservation of benefit to wakif—Validity

Where a wakif reserves to himself a substantial benefit in the shape of a big annual maintenance to himself out of the property forming wakf, the wakf is wholly void (*Thom C J*)

*Nath J*) SHER ALI v HAMID ALI

1939 P. 140=1939 P. 140

190 ACT, S 3

Wakf—Validity—Created on by one in embarrassed circumstances See 1939 Dig. Col 830 ZAMIR

1940 O A 539 (F B)

186 I C 462=12 R S 197.  
 Wakf—Validity of—Wakf alal aulad—Gift to charity without specifying sum—Mutuals required to fulfilment of this object—Re-making specified payments sub

created before the Wakf Vali

When the Wakf came into force the mutwali was required to pay certain yearly allowances to the members of the wakif's family and to spend a certain amount towards pious acts in connection with certain festivals

ordered to make gifts to no sum was specified for stated to be the prin mutwali was enjoined

to render yearly accounts to persons connected with the wakf to show that the principal objects had been fulfilled by him satisfactorily The residue of the income

Will—Bequest of more than a third to stranger—Consent of heirs—If should be express—If can be inferred from conduct

may be presumed that all the parties concerned had

Will—More than one third given to different objects—Validity

If a will is made in favour of a single legatee, of the

he may claim that he But where there are document, there is no reduced to 1/3 of the net does not appear J) KANIZ KUBRA

# MAHOMEDAN LAW

BIBI v MUZAFFARUDDIN HAIDER

1940 A L J 504 = 1940 A W R (H C) 429 =  
A I R 1940 All 462

—Will—Revocability

—Will—Sunni—Power of testator to leave life interest to widow with remainder to another

It is permissible for a Sunni Mahomedan to execute a will leaving a life interest only to his widow with remainder to another heir or to a stranger (Bennett J)

# MAINTENANCE

See also (1) CRIMINAL PROCEDURE CODE S 488

(2) HINDU LAW—MAINTENANCE

(3) HUSBAND AND WIFE

—Rate—Variation—Necessity for a suit

Where the maintenance is based on a written agreement it could be varied without the necessity of filing a suit for that purpose. But the rule is different when the rate of maintenance is fixed by a decree. In such a case variation can only be obtained by a separate suit properly framed for that purpose (Stone C J and Bose J) GHASIRAM v KUNDANBAI

1940 N L J 1 = A I R 1940 Nag 163

# MALABAR LAW

See also (1) MADRAS MALABAR TENANCY ACT

(2) MADRAS MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT

(3) MADRAS MARUMAKKATHIYAM ACT

(4) MADRAS NAMBUDDRI ACT

—Adoption—Results of—Nair tarwad—Affiliation of members of one tarwad into another—Rights in natural family—If retained—Claim to maintenance from natural tarwad—Sustainability—Custom—Putra vakasam property See 1939 D G Col 832 SEETHA NETHYARAMMA v KELU MENON

183 LO 571-  
13 E M 29

—Kanom — Melcharth—Suit for redemption—Decree allowed to become inoperative—Subsequent Melcharth to another—Suit by latter for redemption—If barred—C P Code S 11

The fact that a previous melcharthdar of a kanom from the Jenmi has obtained a decree for redemption and has allowed it to lapse or to become barred is no bar to a subsequent suit for redemption of the kanom by a later melcharthdar from the Jenmi. Where a melcharthdar has no intention of implementing his melcharth, by exercising his preferential claim to redeem the kanom there is no reason why the Jenmi himself or his assignee (a subsequent melcharthdar) should not file a suit for that purpose provided he impleads the prior Melcharthdar (Stuart J) MAMMU v SEYINA

81 L W 569 = 1940 M W N 484 =  
A I R 1940 Mad 877

—Karnavan—Melcharth—Grant of—Properties previously held on kanom and properties held on verumpattam lease—Single melcharth concerning both—A suit See 1939 D G Col 833 MANAVEDAN v VEERAYAN LALLI

189 IC 66 = 13 E M 129

—Tarwad—Disregard of karnavan or manager and other members—Fiduciary duty against tarwad property or remaining members—Tent to find out—Power

# MARRIED WOMEN'S PROPERTY ACT (1874), S 6

of executing Court to determine executability against tarwad—C P Code S 47

A decree passed in a suit against the karnavan or a Malabar tarwad against the tarwad members of the the suit was filed substance of the immaterial if the remaining members of the family were not impleaded as parties to the suit. Nor is it necessary that the karnavan or manager should have been described to be such either in the plaint or even in the decree. If it were found as a fact that the karnavan or the manager was

Rahman J) ARASU BINNANI v CHENNAIPPA HEDGE 1939 M W N 1229 = A I R 1940 Mad 165

—Tarwad—Removal of karnavan—Suit by one

junior member—Maintainability—Joinder of all other members—Necessity See 1939 D G Col 834

SANKARA VARMA RAJA v PAMA VARMA RAJA

185 IC 628 = 12 E M 566

—Tarwad—Tavazhi—Tavazhi property or separate property—Presumpt on—Property standing in name of member—If joint property—Trade carried on by karnavan or member with consent of other members—Acquisition made by such karnavan or member—If separate property or tavazhi property See 1939 D G Col 834

ASSANKUTTI v MAHMAD

186 LO 302 = 12 E M 617

—Thiyyas of Calicut—Joint family property—If impartible—Presumption—Rule See 1939 D G Col 835

KRISHNAN v RAMANATHA IYER

189 IC 727 = 13 E M 318 = A I R 1940 Mad 6

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT AND MALABAR TENANCY ACT See MADRAS ACTS

—B 19—Scope and effect—Agreement by tenant to pay landlord full value of trees spontaneously grown cut by him—Legality See 1937 D G Col 832

SREEDevi v KURIKKAL

188 LO 822 = 13 E M 25

# MALICIOUS PROSECUTION

See TORTS—MALICIOUS PROSECUTION

# MARRIAGE

See also (1) DIVORCE

(2) HINDU LAW—MARRIAGE

(3) HUSBAND AND WIFE

(4) MAHOMEDAN LAW—MARRIAGE

—Dissolution—Suit for—Proof of complicity

In a suit for dissolution of marriage on the ground of the impotency of the defendant, the mere fact that the defendant does not get himself married is not sufficient to establish the plaintiff's allegation that he was impotent at the time of the marriage and has continually remained impotent ever since. (Adams v. Adams C J and Krishna J) M T NATHA PUTHEN v AN ILLA

62 P L S & L 111

# MARRIED WOMEN'S PROPERTY ACT (1874), S 6—Applicable—Where it is found that the object of party was to

# MARRIED WOMEN'S PROPERTY ACT (1874), | MARWAE C P CODE, S 50.

S 6

S 1039 n c c c c c

CLASS MAGISTRATE SNIAT + HADIA

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An endowment policy on the life of the husband  
 of  
 ust

contract debts and is liable to be sued by persons who  
 had business transactions with him. The expression  
 carrying on business' occurring in S 20 (A), C P Code,  
 has been used as distinct from personally working. It

AIR 1940 Cal 217

—S 6—Proceeds of insurance policy—Official  
 Trustee's right to—Official Trustees Acts of  
 1913

Under S 6 (1) para 2 of the Married  
 Property Act the Official Trustee, unless other trustees

Assnort C J and Rangjimal, J) MADANLAL v  
 MADANLAL 1939 Mar L R 263 (Civ)

—S 20—Place of suit—Cause of action—Suit on

in respect  
 of place at

sufficient He is the payee

Held that the Court at M had no jurisdiction to enter—  
 The contract on  
 of a novation and  
 must be deemed  
 executed (Naval

KHATOON In re IL 1939 Cal 169  
 187 IC 881=12 EC 631=AIR 1940 Cal 169.

MARUMAKKATHAYAM ACT (XXII OF 1933)  
 Sec MADRAS ACTS

MARWAE ACTS ETC

Cattle Trespass Act  
 Civil Procedure Code  
 Contract Act  
 Court Fees Act  
 Criminal Procedure Code  
 Evidence Act  
 Guardian and Wards Act  
 Insolvency Act  
 Jagirdars Adoption Rules  
 Legal Practitioners' Act  
 Limitation Act  
 Negotiable Instruments Act  
 Patta Ordinance  
 Penal Code  
 Registration Act  
 Shree Darbar—Leave to appeal.  
 Specific Relief Act  
 Transfer of Property Act  
 Watch and Ward

MARWAE CATTLE TRESPASS ACT, S 20—  
 Complaint under—Magistrate not specially authorised—

—S 41—Appeal—Order staying execution

Any order which furthers, hinders or affects the  
 manner of carrying out the execution of a decree is an  
 order which conclusively determines the rights of the  
 parties so far as regards the execution of the

—S 47—Execution against surety—Court direct  
 ing decree-holder to first proceed against judgment  
 debtor—Order, if tantamount to staying execution  
 against surety

An order of the execution Court that the decree-  
 holder must first proceed against the judgment debtor  
 and if he is unable to realise the decretal amount from  
 him, then alone he can proceed against the surety is  
 tantamount to an order staying execution against the  
 surety. Even though the order is  
 effect  
 decr  
 stay  
 decn

## MARWAR C. P. CODE S 100.

tent with the law administered in British India. The result is that if the son is sued for a debt of his deceased father and the question of the liability of the son arises, it will be decided according as the debt was contracted before or after the date of the Council Resolution so that if the debt relates to a period prior to the year 1916 the son will be personally liable even though he has not received any assets of the deceased. But if a decree has been passed against the father and is sought to be executed against the son as his legal representative the question of the extent of the son's liability will be governed by the specific provision of law laid down by S 50 and decided accordingly (*Aawal Kishore C J Ranjitmal and Sukhdeonaram J J*) RANJITMAL v. GIRDHARILAL. 1940 Mar L.R. 25 (Civ)

—S 100—Question of fact—Market value of property in pre-emption suits

The question as to what is the market value of disputed property is a question of fact and the finding of the lower appellate Court on that question cannot be disturbed in second appeal unless it is pointed out that there was an error of law in determining the market value (*Sukhdeonaram J*) MS. MARIYAM v. NUKANRAJ. 1940 Mar L.R. 46 (Civ)

—S 115—Power of Chief Court to consider evidence—Determination of jurisdiction of Subordinate Court

Chief Court in the exercise of its revisional power can look into the evidence with a view to determine whether the Subordinate Court has assumed jurisdiction which it has not, or declined to exercise jurisdiction which it had (*Sukhdeonaram J*) JAWANMAL v. HARAKMAL. 1940 Mar L.R. 53 (Civ)

—O 3, Rr. 2 and 4 (2)—Vakalatnama—Construction—Power to file appeal

A pleader is competent to take all necessary steps till the filing of an appeal. His restriction in his Vakalatnama to file an appeal is not a restriction on his power to instruct a pleader or agent to file an appeal. He is not competent to file an appeal unless there is express or implied authority (*Aawal Kishore C J, Ranjitmal and Sukhdeonaram J J*) TIJAILAL v. SURAJRAJ. 1940 Mar L.R. 28 (Civ)

—O 6 R 17—Amendment raising technical objection to plaintiff's right to sue—Permissibility

If after the evidence for the plaintiff has been taken the defendant asks for amendment merely for the purpose of raising him to raise a purely technical objection to the plaintiff's right to sue, he should not be allowed to do so. For the amendment is not necessary to bring out the real questions between the parties but proposes merely to enable the defendant to avail himself of a technical rule of law (*Aawal Kishore C J*) LALMOHAMMAD v. GOKALDAS. 1940 Mar L.R. 36 (Civ)

—O 6 R 17—Amendment taking away vested right—If may be allowed

An amendment will not be allowed where its effect would be to take away from the defendant a legal right which has accrued to him by lapse of time (*Sukhdeonaram J*) VAZIR KHAN v. KALU KHAN. 1940 Mar L.R. 6 (Civ)

—O 6 R 17—Pre-emption suit—Grounds of claim—Amendment of—If may be allowed

The plaintiff in a pre-emption suit must be a party confined to the grounds of claim set forth in the plaint. Even amendment of the plaintiff's claim as the grounds of

## MARWAR C. P. CODE, O 40, R. 1

claim are concerned should not be allowed except in very exceptional circumstances (*Sukhdeonaram J*) VAZIR KHAN v. KALU KHAN. 1940 Mar L.R. 6 (Civ)

—O 7, R 11—Plaintiff failing to correct valuation in time—Proper order

Where the relief is undervalued and the plaintiff on being required to correct the valuation within the time fixed by the Court fails to do so the plaint should be rejected and not dismissed (*Nawalkishore C J and*

be given

of hearing as 7th July instead of 24th June and owing to this mistake he and his client did not appear on the latter date and the suit was dismissed

Held that the mistake was a bona fide one and it constituted sufficient cause for restoring the suit (*Ranjitmal J*) JUGRAJ v. BHOPAL SINGH. 1940 Mar L.R. 130 (Civ)

—O 10, R 4—Dismissal of suit for default—Power of Court

The power given to a Court under O 10, R 4(2) "to make such order in relation to the suit as it thinks fit" includes a power to dismiss the suit for default of appearance of party (*Sukhdeonaram J*) MFCRAJ v. BALCHAND. 1940 Mar L.R. 14 (Civ)

—O 13 R 10—Court sending for record of another case—If it can treat whole of it as evidence

According to O 13, R 10 M.C.P.C. a Court is empowered to send for the record of another case for inspection but this rule does not make the whole record evidence in the case (*Aawal Kishore C J and Sukhdeonaram J*) JUTHA v. BHOMA. 1939 Mar L.R. 276 (Civ)

—O 22 R 2—Legal representatives already on record—Formal application whether necessary

Where one of the co-promised dies and his legal representative is already on the record the right to sue survives and the suit does not abate. It is not necessary to bring a formal application (*Ranjitmal and Sukhdeonaram J J*) CHHOGALAL v. JHEBA. 1940 Mar L.R. 119 (Civ)

—O 33, R 2—Temporary injunction—If not taken

In order to justify a temporary injunction not only must the case be such that an injunction is the appropriate relief but there must be the further ingredient that unless the defendant is restrained forthwith by a temporary injunction irreparable injury or inconvenience may result to the plaintiff before the suit is decided upon its merits (*Aawal Kishore C J and Ranjitmal J*) HIMMAT SINGH v. KODARLAL FAJOOAL. 1940 Mar L.R. 66 (Civ)

—O 40 R 1—Execution proceedings—Appointment of receiver—Duration of Court

A Court can appoint a receiver in execution proceedings only when it comes to a decree and consent to do so. Consequently a person applying for the appointment of a receiver in execution of a decree must make out reasonable grounds for such appointment. The Court cannot act as a Court for the appointment of a

**MARWAR C P CODE, O 40, R. 1.**

must be exercised cautiously and judiciously and after a consideration of all the facts and circumstances. A receiver cannot be appointed merely because it will help the decree-holder. He must show definitely that there is some property in the possession of the judgment-debtor

**MARWAR C P CODE S 145****MARWAR CONTRACT ACT, S 62—Novation of contract—Essentials**

In order to operate as a novation under S 62 of the Contract Act, the new contract must involve the present

1933 Mar L R 213 (Civ.)  
O 40, R 1—Order of Court—If should be supported by reasons

S 69—'Bound by Law'—If includes contractual liability.

The person who is interested in the payment of money

trarily but according to legal principles implies that the order of refusing to appoint a receiver is not supported by reasons (Nawal Kishore)

MISRIMAL.  
O 41, R 27—Further appeal to appellate Court.

—Prayer for removal of Munim and appointment of

al of the Munim and incapable of valuation court-fee of Rs. 10

fresh evidence—Duty of Court

It is a well established rule of law that when a litigant has obtained a judgment in his favour in a Court of

or a declaration and possession of I do not claim any beneficial interest court fee payable will be Rs 10, rt 10 (Nawal Kishore, C.F. and BHIKAMCHAND & PHOOLCHAND 1940 Mar L R 117 (Civ))

**MARWAR CRIMINAL PROCEDURE CODE,**

S 102—Non-compliance to the Production of stolen

which would strengthen that weak part of the complex upon that part of the case is strong. The rule that permits a new trial to be granted

strictly enjoined he actual production of the stolen property has no value in the eye of

## MARWAR CR. P CODE, S 145

1940 Mar L R 1 (Cr)

—S 145—Scope of—Question of title—Whether can be considered

Under S 145, M Cr P Code, a Criminal Court is concerned only with actual or physical possession and the question of title to the property is a matter for the Civil Courts

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The without of the voluntary corroborate of the

ting Magistrate it was held that the delay in recording did not detract from the value of the confession (*Nawal Kishore, C J and Sukhdanarain, J*) DEVLA SARKAR 1940 Mar L R 10 (Cr)

—S 173—Referred charge sheet put in by police—Magistrate, whether can order police to put in charge sheet.

A complaint under Ss 147 & 325, M P Code, was made to the police who sent a referred charge sheet to the Magistrate who ordered the police to put in a charge sheet.

Held, that the order directing the police who had put in a referred charge sheet to put in a charge sheet was not a legal order. The police must be allowed to form their own opinion of a case when submitting their report and a Magistrate cannot ask them to change their opinion merely because he does not agree with them. In this case the police were quite entitled to do what they subsequently did, and they were right when they still entertained their former opinion to submit

—S. 173 (1)—Order disposing of police report—Reasons

The order of a Magistrate when disposing of a police report under S. 173 M Cr. P Code is a judicial order and under the provisions of S. 435 M Cr P Code the Sessions Judge can submit his recommendation to the Chief Court if after examining under S. 435 or otherwise the record of any proceeding he is not satisfied with the correctness, legality or propriety of the order passed by the Magistrate or as to the regularity of proceeding in the Magistrate's Court. (*Nawal Kishore, C. J and Kausimal, J*) SARKAR & GUNDEKHRAI 1939 Mar L R 110 (Cr).

Y. D. 1940—27

## MARWAR CR. P CODE S 436.

—S 209—Accused challaned under S 302 M P Code—Committing Magistrate whether can frame charge under S 304 and submit case to Judicial Super intendent

Where an accused is challaned under S 302, M P. Code an order of the Hakim framing a charge under S 304, M P Code amounts to a discharge of the accused

According to the practice prevailing in Marwar the expenses of witnesses for the defence are to be paid by the accused (*Nawal Kishore C. J*) SANVAL & MIST ASI 1939 Mar L R 100 (Cr).

—S 391—Sentence of imprisonment for less than three months—Add tional sentence of whipping—Laps

cognizable or cognizable Against the orders of acquittals in non cognizable cases appeals can be filed only by the Government Advocate under the direction of the Judicial Minister while so far as acquittals in cognizable cases are concerned appeals are to be filed by the Public Prosecutor under the directions of the Inspector General of Police (*Nawal Kishore C J and Sukhdanarain, J*) SARKAR & MUKANCHAND 1940 Mar L R 17 (Cr)

—Ss 420 and 421—Jail appeal—Accused's right to be heard

The proviso to S 421, M Cr. P Code, which lays down that no appeal shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same, does not apply to Jail appeals preferred under S 420 M Cr P Code and therefore in case of an appeal preferred from Jail the appellate Court is not bound to give the accused an opportunity of being heard (*Kausimal and Sukhdanarain, JJ*) ISAR SARKAR 1940 Mar L R 113 (b) (Cr)

—Magistrate's order

to do under S 432 u does in the hearing of opinion of the Chief the Chief Court and to entertain a complaint which Court in. (*Nawal Kishore, C. J*) 'ECONOM CLASS MAGISTRATE, SOJAT & HABILAI 1939 Mar L R 112 (Cr)

—S 436—Further inquiry—Sessions Judge's power to order

The authority given to a Sessions Judge by S 435 to order further inquiry into the case of any person who has been charged in a very wide term and is not referred by any other provision of Law The power is certainly to be exercised sparingly and with circumspection. It can be invoked only if Sessions Judge has been satisfied on examination of a case under the provisions of S

## MARWAR CR P. CODE, S 436

Code, that the order passed by the lower Court in discharging an accused person is not proper or correct (*Ranjitmal, J*) SUKHA : PARTAPCHAND

1940 Mar L R 4 (Cr)  
—S 436—Order of discharge—Interference in revision

there was otherwise, a miscarriage of justice. An order of discharge which is made after hearing all the evidence of the prosecution ought not to be made if it can be said that the order is unreasonable and inconsistent with the evidence before the Court. (*Ranjitmal, J*) BASTIMAL v CHUNILA

—S 476—Finding as to Necessity for

Under the provisions of S 476, M Cr. P. Code, all that is necessary is that the Court ordering an inquiry should have applied its mind to the material before it and be convinced of the necessity to take action. It is not necessary to give a finding to the effect that it was expedient in the interests of justice to take action against the person accused. (*Ranjitmal, J*) KISHENLAL

—S 476 B—Appeal against order of Court of S 476, the appeal

J) SARKAR v P OYMA 1940 Mar L R 25 (Cr)

—S 512—Absconding of accused—Proof required  
In order to prove that the accused person has absconded the prosecution must prove that the accused was present at the place before the occurrence and that he

—S 512—Finding that accused has absconded—Whether necessary

All that S 512 requires is that before the Court records the depositions of the witnesses for the prosecution under this section it should be proved that the accused person has absconded and that there is no immediate prospect of arresting him. It does not require that a finding should be given by the Magistrate to that effect, though it is advisable for the Magistrate to do so. It is, however, necessary before evidence can be recorded under S 512 against the accused in his absence that the fact of his having absconded is alleged, tried and established. (*Sarkhanderain, J*) MADANLAL v SARKAR. 1939 Mar L R 104 (Cr)

—S 512—Strict compliance with—Necessity for  
The fundamental rule of law is that statements made against a person in his absence cannot be taken as evidence against him in a criminal trial. This fundamental rule can only be departed from when a statute permits something to be done. A fundamental rule prohibits, that done by strict compliance of the statute. The exception AIR 1926 All 349, (*Sarkhanderain, J*) MADANLAL v SARKAR 1939 Mar L R 104 (Cr)

## MARWAR EVIDENCE ACT, S 92

MARWAR EVIDENCE ACT, S 32—Statements—Admissibility—Court, if can import extraneous circumstances

A Court is concerned wholly and solely with the admissibility of the statement as it was made and cannot import into consideration any circumstances which are extraneous to the statement. (*Nawal, J*) SARKAR v SHAM 1940 Mar L R 122 (Cr)

—S 32 (3)—Statement of dead person—When admissible against accused

1939 Mar L R 122 (Cr).  
—S 45—Finger prints blurred—Expert evidence, value of

Where certain thumb impressions were blurred, and many of the characteristic marks, therefore, far from clear thus rendering it difficult to trace the features enumerated as showing the identity of the Court could only find a distinct respects held, that it was unsafe to rely on the evidence of the expert. (*Ranjitmal, J*) GANESH v NATHU 1940 Mar L R 138 (Civ)

—S 73—Comparison of thumb impressions—Duty of Court

Although finger prints are not a valuable evidence exercised in thumb impressions, and the positive evidence of witnesses who were undoubtedly present and were eye witnesses to the transaction should not be lightly brushed aside. (*Ranjitmal, J*) GANESH v NATHU 1940 Mar L R 138 (Civ)

—S 91—Oral evidence as to consideration—

is not one of its terms evidence may be given. (*Ranjitmal, J*) USMAN v 1940 Mar L R 34 (Civ)

—S 91—Receipt for payment—Oral evidence of its contents—Admissibility.

A receipt for payment of money does not amount to a contract, grant or disposition of property. Consequently oral evidence of its contents is not barred. (*Ranjitmal, J*) USMAN v JAMNADAS 1940 Mar L R 34 (Civ)

—S 92—Oral agreement making deed inoperative—Admissibility

There is a distinction between an oral agreement that no obligation shall be attached to a written transaction at all or in other words that the deed was meant to be inoperative and an oral agreement that though such obligation does attach its operation was conditional on the happening of a certain event. While no evidence in any shape can be admitted for the purpose of showing

The rule that oral evidence is not admissible to contradict the terms of a written contract is not

## MARWAR EVIDENCE ACT S 101

infringed by admission of evidence of an oral agreement which amounts to a conclusion precedent subject to which the written agreement has been entered into and subject to which the performance of the written agreement is to depend. It is therefore permissible to adduce evidence of a contemporaneous oral agreement under which the parties to the written agreement agreed that until the happening of a certain event no obligation whatever under the written contract shall attach. (*Nawal Kishore, C J and Sukhdamarain, J*) CHIMNIRAM v RAGHUNATH. 1910 Mar L.R. 38 (Civ.)

—S 101—Mortgage—Redemption suit—Burden of proof

In redemption suits, in the first instance, it is for the plaintiff to prove the mortgage on the basis of which he seeks possession by redemption. Where, however, the defendant admits the existence of the mortgage the plaintiff need not be called upon to prove the mortgage. (*Nawal Kishore, C J and Ranjimal, J*) DEYNDRAVAL v. RAMLAL. 1939 Mar. L.R. 279 (Civ.)

—S 116—Lease executed subsequent to invalid transaction of sale or mortgage—Tenant, whether can deny landlord's title.

Where a lease is executed by a person as a part of an invalid transaction of sale or mortgage by him, he is not estopped from denying the title of the person in whose favour the lease is executed. But estoppel will arise if the lease is a transaction altogether separate from the invalid transaction of sale or mortgage. It is of course open to the tenant to prove that the rent note is of no validity whatsoever as it was executed in ignorance of some flaw in the title of the landlord or through coercion, misrepresentation or fraud. If these ingredients are not pleaded and proved, the question of the lessor's title would be foreign to the suit for rent or ejectment against the lessee. (*Nawal Kishore, C J and Ranjimal, J*) RAMSUKH v. PREMSUKH. 1939 Mar. L.R. 277 (Civ.)

## MARWAR GUARDIANS AND WARDS ACT, S 17—Appointment of guardian—Personal law of minor—If can be ignored

There can be no doubt that so far as the power to appoint and declare the guardian of a minor under S. 17 is concerned the personal law of the minor is to be taken into consideration, but that law is not necessarily binding upon the Court which must look to the welfare of the minor consistently with that law. In such cases the personal law has to this extent been superseded that it is not absolutely binding on the Court and can be ignored if the welfare of the minor requires that some one else even inconsistently with that law is the proper person to be appointed guardian of the minor. (*Nawal Kishore, C J, Ranjimal and Sukhdamarain, JJ*) MST KULSAM v. KUTUBUDDIN. 1910 Mar L.R. 105 (Civ.)

## MARWAR INSOLVENCY ACT, S 10—Joint debt

—If included.

A person is entitled to present an application for insolvency if he can show that the debts payable by him whether alone or jointly with others, amount to more than Rs 500. A.I.R. 1927 Lah. 108. *Foil (Sukhdamarain, J)* POOVANCHAND v. GANGADAS. 1939 M.L.R. 259 (Civ.)

—Ss. 34(2) and 28 (2)—Suit filed before adjudication but after presentation of insolvency petition—Costs on judgment debt—If can be proved.

A judgment-debt is a debt provable under the Act and interest and costs on a judgment debt become a part of the judgment-debt. The fact that the creditor commenced the suit in which the decree was passed after the date of the presentation of the insolvency petition

## MARWAR LIMITATION ACT, S. 14.

does not disentitle him to have the costs awarded by the decree entered in the schedule of debts. For S. 28 (2) Insolvency Act does not debar a creditor from filing a suit against the insolvent prior to adjudication. (*Sukhdamarain, J*) KISHRIMAL v. BIJADAN. 1910 Mar L.R. 68 (Civ.)

—S 75 (3)—Order disallowing part of claim—Whether applicable without leave of District Judge or Chief Court

An order under S. 33 Insolvency Act determining the amounts of the debts provable under the Act and the persons who have proved them serves to be the creditors of the insolvent in respect of such debts is one of those orders which are specified in Sec 1 of the Act and is therefore appealable without leave of the District Court or of the Chief Court. (*Sukhdamarain, J*) KISHRIMAL v. BIJADAN. 1910 Mar L.R. 68 (Civ.)

## MARWAR JAGIERS ADOPTION RULES (1952)—Adoption invalid under—If in force until cancellation by Court

Where there has been an adoption in form but such adoption is invalid the adopted son does not acquire any rights in the adoptive family. Consequently it is not necessary to have such an adoption cancelled by a Court. (*Nawal Kishore, C J and Ranjimal, J*) BAKHTAWARSINGH v. NIMESINGH. 1910 Mar L.R. 70 (Civ.)

—'Jagirdar'—Chhut Bhai grantee

The term 'Jagirdar' includes a person who derives his title to an estate from a person who holds a Jagir officially recognised as such by the Durbar. Consequently a Chhut Bhai grantee is a Jagirdar and is subject to the provisions of the Jagirdars Adoption Rules of 1952. (*Nawal Kishore, C J and Ranjimal, J*) BAKHTAWARSINGH v. NIMESINGH. 1910 Mar L.R. 70 (Civ.)

## MARWAR LEGAL PRACTITIONERS ACT, S 32—Pleader suspended from practice appearing regularly as Mukhtar Khas—Whether guilty under

A pleader who had been suspended made it a business of appearing for the parties under cover of special powers of attorney and practically performing the functions of a pleader was held to have evaded the law relating to appointment of pleaders. He was punishable under S. 32 of the Legal Practitioners' Act. (*Nawal Kishore, C J and Sukhdamarain, J*) HIMMATMAL v. PUKHRAJ. 1940 Mar L.R. 136 (Civ.)

## MARWAR LIMITATION ACT S 6—Government

—Right to special consideration

Under S. 5, Marwar Limitation Act Government as such is not entitled to any special consideration as the statute does not recognise a distinction between the Crown and the subject. (*Nawal Kishore, C J and Sukhdamarain, J*) SARKAR v. PRATAP Singh. 1910 Mar L.R. 1 (Cr.)

—S 12 and S. 27 of Copying Rules—Time requisite—When begins

Where according to the rules of the Court the copying fee must accompany the application for copy, the time requisite begins not when the application for copies is made but when the necessary fee is put in. (*Nawal Kishore, C J and Sukhdamarain, J*) SHAMUAS v. LALCHAND. 1910 Mar L.R. 121 (Civ.)

—S 14—Applicability

In the application of S. 14 of the Marwar Limitation Act the general principle to be kept in view is indicated by the clear language of the section and the use of the words 'plaintiff' and 'proceeding' shows that the plain

tiff in the second suit should be the plaintiff in the former suit and that S. 14 is inapplicable to the case of a defendant merely defending a suit. (*Ranjimal and*



## MARWAR LIMITATION ACT, S 14.

*Sukhdonarain, JJ*) DR. ONKARSINGH v. SHER-  
SINGHI. 1939 Mar. L.R. 285 (Civ.)

—S. 14—Extension of time—Test.

—S 14—Former proceeding misconceived—Plain-  
tiff, if entitled to benefit of section

Before the plaintiff can claim the benefit of S. 14, Limitation Act, he must show that he was acting with due diligence and was prosecuting in a Court which from cause of a like nature was where the plaintiff failed misconceived, he is not entitled to this section although he had belief. *Ranjitmal and*

accounts

of certain debit items

Held that this amounted to an admission of an unsettled or outstanding account. (*Nawal Kishore, C.J.*) MAHESWARNATH v. FAIRHIN. 1910 Mar L.R. 23 (Civ.).

—S 19—'Period prescribed'—Whether includes period provided by S. 30

The expression 'period prescribed' occurring in S. 19, refers to the period provided for the institution of the suit within the limited period and

*Sukhdonarain, JJ*) ASSARAM v. SANTOKA  
1940 Mar L.R. 99 (Civ.).

—S 21—'Lawful guardian'—If includes de facto guardian

A de facto guardian of a minor who takes upon himself the management of the minor's property without

1940 Mar L.R. 431 (Civ.).

—S 25—Calculation of period of limitation Vikram Samvat.

The substitution of the words 'Vikrami Samvat' for 'Gregorian Calendar' in S. 25 shows that, for the purpose of Limitation Act in Marwar, time is to be calculated according to the Vikrami Samvat. (*Nawal Kishore, C.J. and Ranjitmal, J.*) GEESINGH v. RAIPUR. 1910 Mar L.R. 62 (Civ.).

## MARWAR LIMITATION ACT, Art. 120.

—S. 30—Applicability—Suits filed after 4th January, 1932.

S. 30 was enacted to provide a period of grace in the

*ANUSHON V. DEVISION.*

1940 Mar L.R. 125 (Civ.).

—Art 23—Acquittal of plaintiff—If refers to initial acquittal order of Magistrate or also covers

or usually in a has the it- prov- ans of The hard

gone some expense and the worries of an additional litigation. Such cases however hard cannot be considered for the construction of statute as hard cases make bad law. (*Nawal Kishore, C.J. and Ranjitmal, J.*) GEESINGH v. RAIPUR. 1940 Mar L.R. 62 (Civ.)

—Art. 89—Principal and agent—Legal representative of deceased principal continuing to employ agent—Suit against agent regarding anterior period—Limitation.

When a man employs an agent and dies and the agent continues to be employed as before, a new agency is created and a suit for the period of the old agency is not affected by the bar of limitation. Such cases might cover two periods the one under the former principal and the other under his legal representative and these must obviously be separately considered. A suit for account for the anterior period brought more than 12 years under the old Limitation Act from the date of the death of the old principal would indeed be barred by

suit relating to the subsequent affected by the death of the old is the new principal only. (*Nawal Kishore, C.J. and Ranjitmal, J.*) IANRAJ v. JAINAPAS. 1940 Mar L.R. 57 (Civ.).

applicability—Suit for recovery of rendered, claiming Geographical for services defense Limita- JJ.)

1940 Mar L.R. 82 (Civ.).

—Arts 120 and 109—Applicability—Suit by co

pa of bo oa because the person receiving the income was entitled to do so. If he however subsequently excludes his co-

**MARWAR LIMITATION ACT, Art 142**

share from their share in the profits, he will be deemed to have wrongfully retained profits, and in that case Art 120, Marwar Limitation Act would be the appropriate article and not Art 109 as the latter article has got a limited application as its terms indicate (*Nawal Kishore, C.J. and KISHORILAL*).

**—Arts 142 & 144**

*proof*

In all cases in which Art 144 is in conflict with the pleadings of the plaintiff the exact nature of the suit. If the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost it by dispossession it comes within the purview of Art 142. Art 144

property had been dispossessed. The burden of proving the date of his dispossession under Art 142 is on the plaintiff who must show that his dispossession was not more than 20 years prior to the institution of the suit. If, however, the plaintiff sues on the basis of his title alone and proves his title, he is entitled to a decree unless the defendant succeeds in establishing his adverse possession for a period of more than 20 years. (*Sukhdamarain, J.*) **MOOLCHAND v VACHANMAL**, 1910 Mar.L.R. 11 (Civ.)

**—Art 142—Scope of,**

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bet  
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**Just for reasonable expedition**

Justice, public interest, necessity and policy all require that even though a period of six months has been prescribed under Art 157, appeals should be preferred all reasonable expedition possible for there may

claim based on his title acquired as purchaser does not relate to the execution, discharge or satisfaction of the decree and is not a step-in-aid of execution within the meaning of that expression in Art 182, Limitation Act. It is open to him to bring a suit for possession of property purchased by him and such a suit is barred by the provisions of S 47, C.P. Code (*Kishore, C.J., Ranitmal and Sukhdamarain*). **MEHRAJ v DHANRAJ** 1940 Mar

**MARWAR PENAL CODE, S 34**

**MARWAR NEGOTIABLE INSTRUMENTS ACT, Ss 8 and 43—Transferee of negotiable instrument under sale deed—Position and rights of**

A transferee under a sale deed of a negotiable instrument is not a holder of negotiable instrument within the

ference between

There is a difference between an endorsee and an assignee of a negotiable instrument. While S 43 creates rights in former's favour against prior parties

(*nam, J.J.*) **MEHRAJ v NARAINDAS**

1940 Mar.L.R. 76 (Civ.)

—Ss 48 and 43—Transfer of instrument by assignment—Rights of transferee.

S 48 of the Negotiable Instruments Act does not prohibit the transfer of negotiable instruments otherwise than by endorsement. All that it lays down is that if the holder of a negotiable instrument transfers it without endorsing it, the transferee merely acquires the right of an assignee of an ordinary chose in action and does not acquire any of the advantages of negotiability, for

It is that the transferee in with all the rights of a Negotiable Instruments

**MEHRAJ**  
**76 (Civ.)**

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sit without

language was dishonoured, it was held that endorser was

of Kishore's land it is not necessary to establish that the sale is com-  
accepted, the pro-  
the purchase money  
of the Thikana to sell  
her person. (*Nawal*

(*Kishore, C.J. and Sukhdamarain, J.*) **JUTHA v RHOMA** 1939 Mar.L.R. 266 (Civ.)

**MARWAR PENAL CODE S 34—Applicability—Proof of prearranged plan—If necessary**

**MARWAR PENAL CODE, S 109.**

complainant in a body armed with lathies and fell upon

**S 103—Abetment—When complete—Instigation—Meaning of**

In order that abetment may be complete it is neces

lish instigation

J) SARKAR v.

**S 341—**

bona fide claim of title

The voluntary obstruction of any person from enter  
ing upon the land under a bona fide claim of title and  
possession is not such an obstruction as can be made  
the subject of criminal prosecution under S 341.  
Marwar Penal Code (Naval Kishore, C J  
Sukhdeonaram, J) SARKAR v PEMSINGH  
1940 Mar L R 6 (C)

**S 384—'Injury'—Threat to obstruct ceremony**

A threat to obstruct marriage ceremony  
not paid would no doubt involve harm to  
well as the reputation of the complainant a  
injury enough within the meaning of S 384, Marwar  
Penal Code read with S 44 Marwar Penal Code  
(Naval Kishore, C J and Sukhdeonaram J)  
SARKAR v MUKANCHAND 1940 Mar L R 17 (Cr)

**S 384—Offence of extortion—Intimidation**

1940

**S 452—Preparation**

of  
The preparation to cause it  
cannot be necessarily inferred

to the person who is armed unless it is shown

**MARWAR REGISTRATION ACT, S 49—Unregistered bond relating to charge on immovable property—If admission to prove personal undertaking to pay,**

**MARWAR T. P. ACT, S 68.**

If a transaction is divisible and one part can be  
registered and the other  
may be used as  
registration  
be collateral

and not dependent upon the part which requires registra  
tion. Consequently where in an unregistered bond  
relating to a charge on immovable property the defen

**Practice.**

It is of great importance not to allow litigants who  
have succeeded in the Chief Court to be harassed by  
further appeals when there is nothing at stake but  
amounts of money which the Legislature has decided to

ular facts of the  
leave to appeal to  
and Ranjitmal,

1939 Mar L R 262 (Civ)

**MARWAR SPECIFIC RELIEF ACT, S 54—Co-sharer deprived of enjoyment of his right—Proper remedy**

1940 Mar L R 17 (Cr)

**MARWAR MORTGAGE AND REDEMPTION ACT, S**

rans  
e for  
the mortgage money only where the mortgagor lends  
himself to pay the same or where the mortgagee is  
deprived of the whole or part of his security by or in

## MARWAR T P ACT, S 137

consequence of the wrongful Act or default of the mortgagee or where the mortgagee being entitled to possession of the property the mortgagor fails to deliver same to him (*Sukhlalmaria v*) BHUKHAN v SHREEK

instrument  
title

S 137  
certain mercantile documents and is in no way restrictive It only allows transfer of the that section apart from the p of the T P Act Consequent may be transferred otherwise (*Ranjitmal and Sukhlalmaria*) NARAIN DAS

MARWAR—Watch and ward  
—Obligation, whether must be

An obligation to offer a Karsas by means of watch theft of their property could t mis personally or through their agents and employees (*Ranjitmal and Sukhlalmaria, JJ*) BHERKSINGH, v HERISINGH, 1910 Mar L.R. 82 (CIV)

—Watch and ward—Georgi Lag—Agreement bet ween Bhomias and Karsas—Whether determinable

An undertaking by Bhomias to keep watch and ward over the fields of Karsas in lieu of payment by the latter of Georgi lag is solely based on mutual agreement and is determinable at the option of either party (*Ranjitmal and Sukhlalmaria, JJ*) BHERKSINGH v HERISINGH 1910 Mar L.R. 82 (CIV)

MASTER AND SERVANT—Clerk—Dismissal—Reasonable notice

## MASTER AND SERVANT.

to dismiss the plaintiff But the mere difference between the outturn of the plaintiff and that of his predecessor will not justify his dismissal If identical conditions, identical work and the presence of the same workmen

satisfactory conclusion can be drawn The mere fact

—Dismissal of servant—Right of—Reserve Bank of India employing servant in spite of his insolvency—Right to dismiss him for same insolvency See 1939 Dig Col 854 RESERVE BANK OF INDIA v ELIAS 186 I.C. 339=12 R.E. 262.

—Employee of District Board—Illegal removal

book duly entered up—If sufficient ground

If in a suit by an employee for damages for wrongful termination of a contract of service, the ployer justifies his action by asserting was habitually neglectful of his duty incompetency in supervision resulted in the production and increase in the percentage of damage during his tenure of office as compared with predecessor, the onus of proof is on the justify his action There is no doubt t negligence of a serious character would justify dismissal of an employee or indeed misconduct occasion only, if sufficiently gross But

the servant would not necessarily be his master's tenant The question as to whether the master's house is a mere

master's house be ancillary to the performance of the

whether he occupied the house in other house (*Lodge JJ*) QUINCE OF 11 W.N. 112 servant—tly

**MASTER AND SERVANT**

resulting in accident—Liability of owner of car for damages See TOPT—NEGLIGENCE

18 Mys L J 345

Wrongful dismissal—Damages—Measure of—Principles

The measure of damages in the case of an employee employed for a term of years. The plaintiff recovered the service, the measure of damages is the amount which he would have obtained if he had not been dismissed. In cases where the plaintiff has not been dismissed, the measure of damages is the amount which he would have obtained if he had not been dismissed. In cases where the plaintiff has not been dismissed, the measure of damages is the amount which he would have obtained if he had not been dismissed.

GOKAK MUNICIPALITY v RAJARAM SHRIDHAR 42 Bom L R 386—A I R 1940 Bom 386

**MESNE PROFITS**

MED CASSIM v SHAIK THAMBY SAHIB

1940 Rang L R 244—189 I O 777—

41 Cr L J 797—13 R R 57—

A I R 1940 Rang 114.

MERCHANT SHIPPING ACT (XXI OF 1923)

cause—What may

of voyage—War—

tail.

o a contract with a

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d war breaks out in

must be deemed to

on the ship, within

Merchant Shipping

place in the war

zone. The voyage which they were now called upon to undertake was not such a voyage as was contemplated by their agreement and it entails risks not contemplated

station master and assistant goods clerk and another for criminal breach of trust and conspiracy—Conviction—Dismissal of station master—Subsequent acquittal in revision—Suit for damages for wrongful dismissal—365 MADRAS CO LTD v

1940 Rang L R 468—A I R 1940 Rang 252

MESNE PROFITS—Assessment—Landlord and tenant—Suit in ejectment—Tenant claiming occupancy right—Decree and dispossession of tenant—Reversal of decree in appeal to Privy Council—Claim to mesne

of assess-

possession—

P CODE,

M L J 984

enjoyment

of others—

alculation—

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MATERIAL ALTERATION—See

MATERIAL ALTERATION

MAXIMS—Actio personalis moritur

See 1920

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A I R 1940 Cal 583.

S 14—Award of costs—Attorney's fees

possession or continue in possession participated, he would be liable. In other words, if the dispossession can be regarded as a joint act of several persons every

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**MINOR**

void, the suretyship contract is collateral and almost an independent contract and it can be enforced against the sureties (*Puranik J*) **TIKKI LAL v KOMALCHAND**  
• **ILR (1940) Nag 632=1940 N L J 358=**

AIR 1940 Nag 327

—Contract of sale by guardian on behalf of—  
Enforceability against minor—Purchaser's remedy See  
1939 Dg Col 857 KRISHNA CHANDRA SHARMA v  
RISHABA KUMAR I.L.R. (1940) Nag 55=

LLR (1940) Nag 55=

186 I O 156-12 R N 136  
 Debts by guardian—Carrying on of ancestral  
 business—Liability of estate *See* HINDU LAW—  
 JOINT FAMILY—ANCESTRAL BUSINESS—MINOR

1940 N L J 584

—Decree against—Absence of representation—  
Effect—Execution sale—Title of passes—Principle of  
S 41 T P Act if applies to sales in execution

AIR 1940 AM 520

Where though there was an order of appointment of a guardian, there was in fact no proper representation of the minor the decree that may be passed against the minor would be void *ab initio* and not merely voidable and an execution sale in respect of such a decree is an

*Verma JJ*) DWARIKA HALWAI v SITIA PRASAD  
I.L.R. (1940) All 344=188 IC 784=  
13 R.A. 69=1940 A.W.B. (H.O.) 253=  
1940 A.L.J. 166=A.I.R. 1940 All 256

—Decree against—If can be passed  
nor defendant can—

**Binding nature—**

A person whose personal interests clash with those of the minor cannot be appointed a guardian of the property of the minor. (*Abdul Qayoom C f and Kichlu f*) GULLU v. AMAR DEVI. 42 P L R J & K 342=

A minor is undoubtedly entitled to plead that he is not bound by a decree provided he lays the foundation for such a plea (*Ismail and Varma, JJ*) **JAGARNATH PRASAD v CHUNNI LAL**

—Arbitration—Reference to by mother on behalf of minor—Binding character See ARBITRATION  
—REFERENCE TO 45 C W N 40=

ILE (1940) All 580 = 1940 A.W.R. (H.C.) 458 =  
1940 A.I.J. 511 = A.I.E. 1940 All 416

A.I.R. 1940 P.C. 181 (P.C.)

—Decree against—Setting aside—Gross negligence of guardian

The burden of proof of minority is upon the minor. Where therefore there is no *prima facie* evidence of

In a suit by the minor assailing a decree obtained against him if gross negligence of his guardian who conducted the case in which the decree was passed

In the case of sureties for the performance of a contract by a minor though the contract by the minor is

A.I.R. 1940 Mad. 810-(1940) 2 M.L

—*Payment of debt by—Validity*

## MINOR

A minor can validly pay any amount towards his debt and such a payment towards any instalment due under an instalment bond would be a good payment to prove that the said instalment was discharged (*Ahau C. J. and Bird, J.*) **MADAN MOHANLAL v ZAHIR UDDIN** 187 IC 809

—Proof of age—Suit on mortgage—Plea of execution during minority—Burden of proof—Boy described

—Voidable transaction—Repudiation by minor—Suit if necessary

A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the late minor. It is not necessary that he should bring a suit. Consequently a minor's failure to institute a suit within three years of his majority cannot *ipso facto* perfect the title of the person claiming under the voidable transaction (*Henderson, J.*) **LALIT KUMAR D'S v NOGENDRA LAL DAS** A I.R. 1940 Cal 589

## MORTGAGE

See also (1) C P CODE O 34

(2) T P. ACT SS 58 98

—Accounts—Mortgagee in possession—Liability to account—Extent of—Sale by mortgagee—Liability to account for sale proceeds on footing of wilful default—Rule

In an action by a mortgagor against a mortgagee in possession who has sold the mortgaged property, the mortgagor is entitled to an account of the proceeds of sale received by the mortgagee or to his use or which without his wilful default has been so received although wilful default has been charged in the pleadings and a mortgagee in possession must account out his wilful default he might have time of his taking possession (*Blackwell, J.*) **KARSON CHAMPSI v MEGHJI ASARIA** 42 Bom.L.R. 917

—Beneficiary under trust—Mortgage by—Validity  
A beneficiary under a trust deed is competent to mortgage his interest. There is no doctrine of the law of India which prevents a beneficiary under a trust from dealing with his interest by way of mortgage, though such an interest is not regarded in India as an equitable estate (*Sir G.*)

## MORTGAGE

mortgagor of having received consideration. The moment such a document is proved and exhibited it is for the mortgagor to rebut the presumption arising out of the recital in it. If, further, instead of the mortgagor himself, the mortgagee has to sue his legal heir who is an infant, there is no greater burden as regards proof of consideration on the mortgagee (*Aminul and Sukhtanarain, JJ.*) **BALKISHAN v M.T. JAWARI** 19 Mar L.R. 211 (Civ.)

of payment—Recital

As a rule a recital in the deed is no evidence to prove the payment of consideration. But where the transaction has taken place some 60 years ago and where the parties thereto are all dead, the recital in the deed as to the payment of consideration may be relied upon as a reliable piece of evidence (*Ismail, J.*) **RAN ILI PFAREY LAL** 186 IC 515= 12 RA 408=1939 A.W.R. (H.C.) 872= 1939 A.L.J. 1056=A.I.R. 1940 A 101

—Construction—Covenant to pay—Executant undertaking to take back land mortgaged on paying up principal in one lump and getting endorsement of creditor on deed—Effect of—Right to sue for mortgage money

A mortgage deed provided that the executant on paying up the amount of principal in one lump sum in the month of Jeth 1334 F.S. and getting endorsement of payment made on the back of the deed by the creditor would take back this land.

—Construction—Redemption—Time for—Provision for payment of principal within five years—Mortgagor permitted to sell portions of hypotheca and pay sale price to mortgagee in repayment of mortgage within period—Further provision for payment of principal and interest due after five years—Right of mortgagor to redeem before five years

The words 'within five years' or 'in five years' used

the items of the hypothecated property except item I and adjust such sale consideration towards the payment of the amount of the bond. After such payment you must redeem that particular item of the property from the hypothecation. . . I shall repay you the principal and interest due for the time after the expiry of the stipulated period and get back this document and other documents of reference.

Held, that the deed should be read as a whole to

## A.I.R. 1910 P.C.

—Co-mortgagors—Transfer by some of entire equity of redemption to mortgagee—Position of mortgagor—Suit by the other co-mortgagors—Nature—Limitation—Limitation Act, Art 144. See 1939 Dig. Col 860 **KISHAN GOPAL v ABDUL LATIF KHAN** 15 Luck 175=185 IC 114= 12 B.O. 185=A.I.R. 1910 Oudh 97

—Consideration—Burden of proof.

If a suit is between the mortgagee and the mortgagor only and the mortgagor admits the fact of proving want of consideration does not admit the execution or denies it and therefore denies the burden of proving execution and deduction are both on the plaintiff or he discharges his burden by proving that the document contains

## MORTGAGE.

(*Abdul Ghani, O C J and Venkataranga Iyengar, J*)  
 SUBBANARAYANA v KAMACHANDRA RAO

18 Mys L J 103=45 Mys HCR 109

—Construction—Reference to surrounding circumstances

One deed cannot be interpreted in the light of the language used in other deeds. In each case the Court must look to the nature of the particular mortgage and the surrounding circumstances to ascertain what the intention of the parties was (*Bennet and Verma, JJ.*) **ASHARFI LAL v ZAMIR FATIMA BIBI**

I.L.R. (1939) A 990=187 I.C. 485=

12 R.A. 534=1940 A.W.R. (H.C.) 21=

1939 A.L.J. 1127=A.I.R. 1940 All. 29

—Construction—Suit for money—Hypothecation for land not for principal but to secure payment of interest—Effect of—Right to money decrees

Where the executant of a mortgage mortgages and

lands with tenants and realised a certain amount as

and that the premium obtained by the settlement of the

the mortgagor for the premium realised by him in taking

accounts (*Writ and Manohar Lal JJ.*) **RAMESH**

**WAR NATH v NARAMDISHWAR PRASAD NARAIN**

**SINGH**

6 B.E. 571=188 I.C. 39=

12 E.P. 653=A.L.R. 1940 Pat. 627

—Decree—Binding nature—Suit against some of

the heirs of a Mahomedan mortgagee—Omission to

implead others, accidental—Estate, if sufficiently

represented

Where a suit is brought on a mortgage executed by a

Mahomedan against some of his heirs and the failure to

implead the others was purely accidental and the plaintiff

has acted with due care and caution, the estate is suffi-

ciently represented

—Difference arising of—Distinguishing fea-

tures

In a simple or in a usufructuary mortgage, the

conditions which the parties desire to express

in regard to a term will be different from the

## MORTGAGE.

conditions which the parties desire to express in a mortgage by conditional sale. In the latter mortgage one of the points which the parties desire to express is within what period redemption is to be allowed. There is no reason to make these two periods the same and the natural agreement would be to allow redemption up to a certain date and if not made by that date then to allow the right to foreclosure to begin. No such points arise in a simple mortgage; and in a usufructuary mortgage the important point is that the usufructuary mortgagee desires to hold possession for a certain time in order that he shall have the benefit of such a period. (*Bennet and Verma, JJ.*) **ASHARFI LAL v ZAMIR FATIMA BIBI**

I.L.R. (1939) A. 990=

187 I.C. 485=12 R.A. 534=

1940 A.W.R. (H.C.) 21=1939 A.L.J. 1127=

A.I.R. 1940 All. 29

mortgagee is not tantamount to an admission that the

—Equitable mortgage—Suit on—Appointment

**NAAGU DAI**

**12 E.M. 607**

—Extinction—Merger in decree—Part of mortgag-

ed property not included in suit—Mortgagee's rights in

that part—If extinguished by decree

If a mortgagee in lodes in his suit on the mortgage

only a part of the mortgaged property, the decree passed

in the suit can operate to determine only the mortgagee's

rights in the part so included. The only legal effect of

that decree on the mortgagee's rights in the property

which is not the subject matter of the suit is a bar in

respect of a fresh suit created by O. 2, R. 2 C.P. Code

The mortgagee's rights in that property subsist in spite

of that decree (*Bhude, J.*) **PUNJAB NATIONAL BANK**

**LTD v OFFICIAL RECEIVER, KARNAL**

188 I.C. 833=13 E.L. 50=

42 P.L.R. 29=A.I.E. 1910 Lah. 166

value of that estate is the valuation to him

amount due on the mortgage. The mortgage

taken to be satisfied to the extent of the

estate purchased by the mortgagee less the



## MORTGAGE

him for it. If he purchases only a part of the equity of redemption, he is entitled to enforce the mortgage.

AIR 1940 Pat 707

—Independent mortgages in favour of same person  
—Right to sue separately on each

There is nothing in the C P Code or in the T P Act before its amendment to prevent the holder of two independent mortgages over the same property, who is not restrained by any covenant in either of them, from obtaining a decree for sale on each of them in a separate suit (*21a ul Hasan f*) *LASA DIN v MAHOMD ABDUL SHAKOOR* 15 Luck 399=

1940

—Int  
SURAJ M

—Keeping alive—Priority—Prior mortgage taking later mortgage after mortgage in favour of third

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1922. It was stated that security was given and there was a stipulation to pay a lower rate of interest. A suit was brought within 12 years of the due date of payment of the bond of 1922 but more than 12 years of the due date of payment of the bond of 1912.

Held, that by the mortgagee never gave up his security on the effect of the mortgage.

mortgagee so far as the property of 1912 had never been still be enforced and was also the full amount secured was on the bond of 1922 was not mortgage bond of 1912 was C to priority must fall

JJ) *SINOHESHWAR SINGH v MEDNI PRASAD* 187 IC 339=12 RP 582=6 BR 453=

—Lien—Sale of mortgaged property  
—Effect on mortgage—Effect on lien—Sale

the mortgagee sell the property to recover any amount left out by him inadvertently at the time of execution. Piecemeal execution of a mortgage decree cannot be allowed (*Mohammad Naeer f*) *GOKUL PIHARI DAS v KALANDI SENA* 189 IC 352=13 EP 78=

GDR 700—AIR 1940 Pat 101

## MORTGAGE

—Mortgage by deposit of title deeds—Memorandum  
—Necessity for registration.  
862 HARI SANKAR PAUL z.

ILR (1939) Kar (P O) 287=  
1940 PWN 1 (P O)

—Mortgage for a term—Redemption earlier  
—If open

Ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property. Such a provision is validly made to the advantage of the mortgagor. (*Set and Verma, JJ.*) *ASHARFI LAL v FATIMA BIBI* ILR, (1939) A 990=

187 IC 485=12 RA 534=  
1940 AWR (HC) 21=1939 ALJ 1127=

AIR 1940 A 29

—Mortgage in possession—Nature of possession—

—Mortgage suit—Accounts of mortgagee—Basis for taking—Directions to Commissioner—Duty of Court as regards—Practice—Accounts on basis of mortgagee being in possession—When directed—Duty of parties to

given to tenants and so forth—amount in law to taking

on the basis of the mortgagee in being possessed is necessary for the parties at the hearing to they desire to do so and to prove that the is a mortgagee in possession and if the not directed accounts on that basis, it afterwards alter its order by doing so. Nor can the parties come back to the Court and ask the Court to direct accounts on a different basis.

*Wadia, J.*—A mortgagee in possession is not a trustee for the mortgagor, and has to render accounts according to S 76 T P Act and to prove that his accounts are true and correct (*Beaumont, C J* and

## MORTGAGE

*Vadia, J*) ANANDAJI SAWAJI & CO v AHMED-BHOY ABEDINBOY PEERBHOY

11 B (1940) Bom 645-190 IC 280-

13 B 104-42 Bom LR 580-

AIR 1940 Bom 227

—Mortgage suit—Appointment of receiver in favour of mortgagee creates charge in favour of mortgagee—Money due to Government for—If takes priority over claim of crown debt

A simple mortgage in India does not enlarge the scope of the mortgage. The mortgagee has

cannot therefore claim priority over money mortgagee to the Crown by way of the value known as *kutimaramuth* accrued due to

In a suit to enforce a mortgage the onus of proof on

whether there was legal necessity for the borrowing the onus of proving it is on the plaintiff (mortgagee) (Lord Justice Goddard) BHAGWAN SINGH v

BISHAMBAR NATH 189 IC 152-1910 AWR (PC) 99-1940 O A 441-

1940 MWN 713-52 LW 310-

1940 A LJ 493-6 B E 739-1940 O LR 454-21 Pat LT 773-13 B PC 29-42 Bom LR 990-

42 PLR 687-AIR 1940 Bom 227-

(1940) 2 M L

—Mortgage suit—Costs—Award of subsequent alienee of mortgaged property

When justified—Grounds for award Col 862 SURAYYA v KRISHNAMURTI

185 IC 434-12 B M 540

—Mortgage suit—Costs—Purchaser of mortgaged property—Failure to carry out contract and giving rise to suit—Liability for costs See COSTS—DISCRIPTION—MORTGAGE SUIT (1940) 1 M L J 388

—Mortgage suit—Costs—Subsequent purchaser's appeal—Costs with reference to—It to be recovered

—Mortgage suit—Redemption—Date of mortgage—Onus—Duty of plaintiff to prove See LIM ACT, ART 148 1940 MWN 416

—Mortgagor and mortgagee—Stranger or trespasser in possession—Rights of parties

If a stranger enters into adverse possession of property burdened with a simple mortgage then he only prescribes for the interest of the person entitled to immediate possession, that is to say, of the mortgagor, whose only

## MORTGAGE.

mortgagor's rights or the trespasser who is in the process

an intangible right in in movable property and cannot

INDIA, LTD v FORBES, FORBES CAMPBELL & CO 186 IC 317-12 B L 379

—Mortgage—Growing crops—Validity—Assigned from mortgagor with notice of mortgage—Rights of

Growing crops are not immovable property under the T P Act, and a mortgage deed hypothecating the produce realised from land every year would operate as a mortgage of movable property There can

at the instance of the mortgagee in his suit (*Ventata-ramana Rao and Abdul Rahman JJ*) VENKATA

CHALAM CHETTI v VENKATRAMI REDDI 1910 MWN 978-52 LW 465-

AIR 1910 Mad 929-(1940) 2 M L J 468

—Prior and subsequent mortgages—Suit by first mortgagee without impleading second mortgagee—Decree and sale—Purchase and possession by first mortgagee—Subsequent suit by second mortgagee—Right of

second mortgagee to set up his mortgage as against claims of first mortgagee—C P Code, O 34, R 1

A second mortgagee who is not impleaded in a suit on a prior mortgage is not to be in any better position by reason of the failure of the prior mortgagee to join him in his suit, he is only entitled to have his rights which existed at the date of the institution of the first suit safeguarded. The failure to join him cannot give

second mortgagee any further rights which he possesses so as to entitle him to ignore the first mortgage. A first mortgagee who

## MORTGAGE

decree in a suit on his mortgagee without impleading the second mortgagee and brings the property to sale and purchase it himself and gets possession is entitled to set up his prior mortgage against the claims by the second mortgagee for possession and sale of the mortgaged property, although at the date of suit on the second mortgage the period of limitation for a suit in respect of the first mortgage has expired. The first mortgagee in such a case is not suing on his mortgage or making any claim under it, but is only attempting to use it as a shield to the claim put forward by the second mortgagee. (*Gentle, J.*) SENGAMUTHU GOUNDAR v. THAYARAMMAL. 1940 M.W.N. 256=

A I R 1940 Mad 646=(1940) 1 M L J 740  
 —Prior and subsequent mortgages—Suits on, and decrees—Each mortgagee not impleaded in suit of the other—Sales in execution—Purchasers—Rights inter se as regards possession

cut per pu.  
 reason of his prior purchase. (*Abdul Ghani, Offg C.J. and Singaravelu Mudaliar, J.*) SEVARAM LUNI

mortgagee to pay off the first and a second mortgage—Money for discharge left with first mortgagee—Payments not made—Effect—Second mortgagee is entitled to priority over first

Where an owner of property executes a third mortgage in favour of the first mortgagee himself, for paying off his own first as well as a second mortgage in favour of another, and the necessary amount for the discharge of both is left with the first mortgagee himself, but he fails to pay it, equity will regard the

priority over the first mortgage.  
 mortgage must be deemed to be.  
 (*Braund, J.*) RAMACHARAN v. 1  
 1910 A W E (H C.) 51  
 1940 A L J. 806=

—Recitals—Value—Old tran  
 Where the interval between the mortgage and the institution of a suit is long, the recitals in the deed of evidence embodying a correct  
 (*Jasral and Varma, JJ.*) TE PRASAD.

1940 A.W.E. (H C.) 431=  
 —Redemption—Mortgagee  
 some mortgagees—Effect—Remain  
 can claim to redeem whole of remaining property.

On the purchase by the mortgagee of the shares of some of the mortgagors in the properties, the integrity of the mortgage is broken and thereafter the only right that each mortgagor has is to red  
 (*Iqbal Ahmad, J.*) DURGA PRA  
 1940 A W E. (H C.) 512=

—Redemption—Mortgagee fr  
 payment of rent—Dispossession—Mortgagee taking  
 new te  
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## MORTGAGE

Dig. Col. 864 KISHEN GOPAL & ABDUL LATIF KHAN  
 15 Luck 175=185 I C 114=  
 12 R O 185= A I R 1940 Oudh 97.

—Redemption—Puisne mortgagee not made party to mortgage suit—Right to redeem.

A puisne mortgagee who was not made a party to the mortgage suit is not bound by the decree passed therein and is entitled to exercise his right of redemption. The prior mortgagee as against him is entitled to the mortgage money with interest at the bond rate up to the date of the expiry of the period of grace. (*S. K. Ghose and Mukherjee, JJ.*) AMULYA KRISHNA BANNERJEE v. RABULI PIONEER CO-OPERATIVE BANK, LTD  
 187 I.C. 416=12 R.C. 578=  
 70 C.L.J. 397=A I R. 1940 Cal. 150.

—Redemption—Right of mortgagee to redeem

—Redemption—Right of—Subsistence—Point of time.

\*929 the mortgagor's confirmation of the express legislative sanction to that view. It has not the effect of making any alteration in the right of redemption which was repeatedly recognized in a long line of cases (*Jasral and Varma, JJ.*) JAGARNATH PRASAD v. CHUNNI LAL  
 I L E (1940) All 580=  
 1940 A W E (H C) 458=1940 A L J. 511=  
 A I R. 1940 All 416.

—Redemption—Term fixed—If absolute—Redemp-  
 Right of mortgagor—Law  
 mortgage deed.  
 term is fixed for a mortgage,  
 may have a right to redeem before the

the vendees and endorse the same on the document and get the title deeds relating to the item from you".

Held, that the term of two years fixed worked both

**MORTGAGE**

Sub mortgage—Position of—Compromise decree fixing "state of account" between mortgagor and mortgagee—If lands sub mortgaged See 1939 Dg, Col 865 BHAGWATI PRASAD v DULLAN SINGH ILE (1939) All 913=187 IC 142=12 RA 472

Sub mortgage—Right of sub mortgagee—Sale of mortgaged property

A sub mortgagee has a right to bring to sale the property of the mortgagor for recovering his money. In fact when a mortgagee sub mortgages his rights he becomes a surety and the sub-mortgagee can enforce his claim against the property which was mortgaged to the mortgagee and also against the mortgagor. The only reservation is that if notice of the sub mortgage is not given to the mortgagor and the mortgagor pays the mortgagee the sub-mortgagee But this right to the property when the amount has not been paid by the mortgagor to the mortgagee (Mir Ahmad J) DOST MAHOMED v DHERU MAL 189 IC 665=13 B.Pesh 13=AIE 1940 Pesh 25

A prior mortgage as a shield or weapon of defence can not be said to die when the law of limitation puts an end to the remedy on that mortgage by suit. The fact that a mortgagee has no mortgagee's right in the property sold in mortgage to the

on his mortgage and in execution sought to sell the property.

Held that in such a case, in the absence of any evidence to the contrary, the presumption was that by making the payment to S, A intended to keep S's charge alive to the extent of amount paid by him and for that sum he must be held to be subrogated for S. It must be the proportion of and RAM

**T. P. Act**

Before the amendment of 1929 T. P. Act a sub mortgagee who paid off the decretal money obtained on foot of a prior mortgage is entitled to claim that money by sale of the hypothecated property

**MUSLIM MAR DISSOLUTION ACT (1939).**

(Ismail and Parma, JJ) JAGANNATH PRASAD v CHUNNI LAL, ILE (1940) All 680=1940 A.W.R. (H.C) 458=1940 A.L.J. 511=AIR 1940 All 418

Substituted security—Mortgage of undivided share by coparcener of joint Hindu family—Rights of mortgagee See HINDU LAW—JOINT FAMILY—COPARCENER AIR 1940 Nag 149.

Usufructuary mortgage and lease—Distinction between See LEASE—ZAKATP. SHGI 1940 A.W.R. (H.C) 672

Usufructuary mortgage—Nature of mortgagee's interest in

If an usufructuary mortgage an interest in immovable property is transferred to the mortgagee and by virtue of the transfer he is entitled to the possession of immovable property. A sale of such right conveys the right to possession of the property. Hence such a mortgagee's interest in the mortgage is in movable property. (Iqbal Ahmad and Bafui, JJ) RAM DIN SINGH v. ARJU PRASAD ILE (1940) All 596=100 IC 163=13 RA 162=1940 A.W.R. (H.C) 409=1940 A.L.J. 440=AIR 1940 All 431.

Interest not delivered—Suit by mortgagor from trespasser, 867, GOVINDAN

19=12 R.M. 608

tenants settled by mortgagee in possession—Redemption by mortgagee—Effect on tenancy—If determines tenancy

Unless there is a provision in the mortgage deed restricting the power of the mortgagee in possession as regards the settlement of raiyati lands the mortgagee is, in the ordinary course of management, entitled to settle raiyati lands with tenants, and such settlement will be

**MURSHIDABAD ESTATE ADMINISTRATION ACT, S 19—Arrears of rent—Rent falling due before Act—If included**

The term "arrears of rent" in S 19 of the Murshidabad Estate Administration Act is not limited to rent which falls due after the commencement of that Act and remains in arrear but includes rent which fell due before (Nasim Ali and Rau JJ) FOR INDIA v SYED SANA 12 Cal 312=44 O.W.N. 901.

**ES DISSOLUTION ACT**

ope—After specific operation—

Um v. Baid 1, 616, 618

The Act VIII of 1939 must be taken to indicate general principles of justice equity and good applicable and there is no difficulty in applying principles and applying them to cases in

**MUSLIM MAR. DISSOLN ACT (1939), S 4**

the Act came into force. (*W*)  
*v. VAZIR MAHOMED.*

**—S 4—If retrospective.**

S. 4 is not retrospective and consequently in the case of a Muslim husband and wife apostasy of either party prior to the coming into force of the Dissolution of Muslim Marriages Act dissolves the marriage. (*Monroe, J.*) *MT MARIAM v FAZAL KARIM.*

A.I.R. 1940 Lah 448

**—S 4—If retrospective. (T) AP—of—If**

cancelled the provisions of S 4 of the Ajmer Regulation of 1877. This cancellation will however not affect the subject-matter of suits instituted before the date of the enactment of that Act (*et c.*) in 1937. The result is that suits instituted before 1937 must be decided by the provisions of the Regulation of 1877. (*Monroe, J.*) *AZIMAN v ABDUL RAHIM.*

**—S 2—Effect of**

The effect of S. 2 of the Shariat Act is to make the Muslim Law expressly applicable to subjects which

stitute for them the views of Muslim points. (*Mitter and Roxburg*)  
*AHMED v SOHIA KHATUN.*

I.L.R. (1940) 2 Cal 4

**MUSSALMAN WAKF ACT**

*Plas as to inapplicability of Act can decide*

1940 N.L.J. 98—A.I.R. 1940 Nag 161

**—Ss 5 and 10—Liability to furnish Power of District Judge to adjudicate.**

is liable to furnish accounts under S 5 of the Act. If the case falls under the Act, then S 5 lays down a sub

*Krishna, J.*) *ABDUL WAHID v CHHEDDU.*

188 I.C. 134—1910 O.L.R. 312—12 R.O. 418—

1910 O.A. 454—1910 A.W.R. (O.C.) 215 (2)—

1910 O.W.N. 698—A.I.R. 1910 Oudh 813

—as amended by Bombay Act XVIII of 1935)

**MUSSALMAN WAKF (BOMBAY AMEND**

MENT ACT (1935), S. 61—Jurisdiction  
 —Property of wakf situate  
 —to make order of contribu

tion on mutawallis. See 1939 Dig., Col. 869. *AHMED*

*IBRAHIM, z. COLLECTOR OF SURAT.*

I.L.R. (1939) Bom. 611—186 I.C. 870—12 R.B. 278,

**MUSSALMAN WAKF VALIDATING ACT (VI**

**OF 1913), Wakf subsequent to, and apart from provisions of—Valuistly—Act to be applied.**

If there can be a valid wakf subsequent to the Mussalman Wakf Validating Act apart from the provisions of the Act, where the wakf makes provision for the family of the wakif then the test to be applied to ascertain its validity would be the same as that applied to cases decided before Act VI of 1913, namely, that if the effect of the deed was to give the property substantially to charitable uses it would be valid, but if the effect of the deed was to give the property in substance to the settlor's family then it would be invalid under Mahomedan Law.

*poses highly commendable according to Hanafi School—Validity of such wakf.*

*W. Kull Bench Zia ul Hasan J. dissenting—A*  
*ribing the ultimate object of the benefit as*  
*purposes highly commendable according to*  
*1001' (Amur i-khair men jo damaujib masab*

*Parlatibai, 26 I.A. 71. (Zia ul*  
*and Radhakrishna, J.) AHMADI*

*IN NISA. 15 Luck. 588—*

*R.O. 69—1940 A.W.R. (O.C.) 271—*

*140 O.W.N. 689—1940 O.L.R. 458—*

*539—A.I.R. 1910 Oudh 324 (F.B.)*

*idity of wakf—Consition*

*A wakf for the maintenance of the wakif's family is*

*us, pious*

*en, J.)*

*J. 432—*

*44 O.W.N. 718—A.I.R. 1910 Cal 417.*

**—S 3 (a)—'Family'—Meaning.**

The word 'family' in S. 3 (a) of the Mussalman Wakf Validating Act is used by the Legislature in its broad

—to include all persons descended

—common progenitor (*Collister, J.*) *KUTUB*

*WAKF OF FATIMA BEGAM*

*190 I.C. 634—1940 A.W.R. (H.C.) 352—*

*1940 A.L.J. 399—A.I.R. 1910 All 383.*

**—S 3, proviso—Applicability—Performance of**

*fatehas.*

The performance of *fatehas* ceremonies is a 'religious, pious or charitable purpose' within the meaning of the

proviso to S 3 of the Mussalman Wakf Validating

*KUTUB UDDIN, WAKF OF*  
*190 I.C. 634—1940 A.L.J. 399—*  
*(H.C.) 352—A.I.R. 1910 All 383*

*—Maintenance of family—If pious*

*and support of the family, children*

*ie wakif, does not come within the*

*phrase "other purpose recognised by Mussalman Law as*

**MUSSALMAN WAKF VALID. ACT (1913), S. 4.**

persons" used in the proviso to S. 3 of the Wakf Validation Act, for maintenance of these persons or class of persons is expressly mentioned in the body of that section (*Mitter and Roxburgh, JJ*) MOHIUDDIN ARNEED v SOFIA KHATUN

I L R (1940) 2 Cal 464=44 O W N 974=

A I R 1940 Cal 501

**MYS CITY MUN. ACT (1933), S 101.**

Religious and Charitable Institutions Act.  
Road Traffic and Taxes Act.  
Small Cause Courts Act.  
Stamp Act.  
Town Municipalities Act.  
Transfer of Property Act.

**JEFF ACT**

—Who is—  
O at time of  
aggregate—

I L R (1940) 2 Cal 464=44 O W N 974=

A I R 1940 Cal 501

**MUTATION—Alteration in old**

**city.**

It is settled law that sanctity does

not attach to the old city.

—*Evidentiary value.*

Mutation in favour of a person is not conclusive evi-

dence of title.

—*Share for the amount agreed to be paid to him in lieu*

of the latter's share in the assets of the family business

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— S 3—Applicability—Family partition—Mort-

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of the latter's share in the assets of the family business

**SALAMAT KAI v MOKAND LAL**

—*Proceedings in—Nature*

Mutation proceedings are mere

inquiries, instituted in the intere

purpose of ascertaining which of the several claimants

for the occupation of the property may be put into

occupation of it with the greater confidence that the

revenue for it will

**BUX v GOPAL I**

21 Pat L.T. 5

1940

1940

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**MYSORE REGI**

Agriculturists

City Municipalities Act

Civil Courts Act

Civil Procedure Code

Co operative Societies Act.

Court Fees Act

Criminal Procedure Code

District Boards Act

Hindu Women's Rights Act.

Insolvency Act

Land Acquisition Act

Legal Practitioners' Act.

Limitation Act

Negotiable Instruments Act.

Y. D. 1940-59

of the Act refers to persons who have pensions cannot make pensioners liable. The bye-laws framed by virtue of the powers under S 49 (4) must not be inconsistent with the Act or the rules made by the Government under S 228 S 64 (x) does not mention pensioners as those on whom tax can be levied by a Municipal Council. If therefore the bye-laws include

—*Share for the amount agreed to be paid to him in lieu*

of the latter's share in the assets of the family business

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MYS CITY MUN. ACT (1933), Sch. V.

The jurisdiction of a Magistrate as a Court of Appeal and of a Sessions Judge as a Court of revision under S. 101 of the Mysore City Municipalities Act, is given by that special enactment. It is and no costs should be awarded in the section when there is no prov awarded. An order by the Sessions costs to a Municipal Council under fore illegal and without Juris *Mudatlar, f.)* KRISHNA RAO

**MYS. C. P. CODE (1911), S. 13**

jatra, and that the defendants were not entitled to have  
 the S Mutt Ajya or Viratak to celebrate the jatra,  
 and for a permanent injunction restraining the defen-  
 tiffs The ed upon an  
 favour by  
 sors. The  
 defendants  
 he S Mutt.  
 bar of the

in co defendants it is  
e, is raised between  
m in the course of  
test must be really  
if that decision is  
litigation between  
many *Iyer, J.*  
18 Mys L J. 599.  
rior mortgagee par-

## MYS C P CODE (1911), S 37

British India and becomes a subject of the Native State,

adopted as his domicile, (*Nageswara Iyer and Venkata  
ranga Iyengar, JJ*) RAMA CHANDRA UDUPA v  
KRISHNA BHATTA 44 Mys H C R 578 =

18 Mys L.J. 220

—S. 37—Construction and scope—Court actually  
passing decree—Power to execute decree after transfer  
of local jurisdiction.

S. 37 of the C. P. Code is an inclusive provision and  
it does not exclude the Court which actually passed the  
decree, and which under S. 38 has power to execute its  
decrees.

also a representative of the decree holder  
C. P. Code. A dispute between the atts  
holder who attaches the decree and the a  
decree which is attached falls under S  
and hence an order deciding the dispute or  
other is appealable (*Nageswara Iyer and Subrah  
manya Iyer, JJ*) SUBBARAYAPPA J WALAPPA.

18 Mys L.J. 503

—S. 60 (1) (p)—“Bonus”—Meaning of—If inclu-  
des amount payable as insurance money under policy of  
life assurance.

Although it is a very extended and unusual meaning,  
there is no doubt that the word “bonus” is used in that  
artificial sense in S. 60 (1) (p), C. P. Code, so as to

## MYS C P. CODE (1911), S 64

Include the amount insured under a policy issued by the  
payable to the  
under the rules.  
J) SITARANA

18 Mys L.J. 512.

—S. 60 (1) (p)—“Decree relating to a debt due or  
contracted by an officer”—Meaning of—Decree against  
managing director of company for amounts due by com-  
pany as agent of Government in respect of sale proceeds  
of Government property—If decree for debt.

The word “debt” in Cl. (1), (p) of S. 60, C. P. Code,  
cannot be read as applying only to a sum of money due  
from the borrower of a loan, or some amount of money  
owed in connection with or in consequence of a contract.  
The word “debt” must be interpreted in its ordinary,  
popular and legal sense.

inferior Court are sent by the Court for purposes of distri-  
bution under S. 63, C P Code, to a superior Court, the  
date on which the amount is received by the superior

18 Mys L.J. 1 = 41 Mys H C R 615.

—S. 61—Applicability—Attachment before judg-  
ment.

equally to attachment  
in execution. (*Reilly,  
J.*) NARJUNDAPPA  
18 Mys L.J. 438.

“Private transfer” —

Arbitration and award after attachment—Distributi-  
on of property effected under—Award filed in Court  
made decree of Court—If void.



## MYS C P CODE (1911), S 73.

Transfers made in accordance with judicial decisions &c, decrees on basis of awards in arbitration, in vindication of titles existing before any attachment was made would not come within the mischief of S 64, C P Code,

anything other than a private transfer. A transfer voluntarily arranged among judgment-debtors and their friends or relations, merely because it is put in the form of an award and then given the force of a decree of

distribution—Omission to ask for attachment—Right

for execution of their decrees. The mere fact that in his execution application a claimant omits to ask for

—S 100—Concurrent findings of fact—Finality—Ignoring of vital admissions of party—If justifies reopening of findings in second appeal. See 1939 Dig, Col 874. SRINIVASA IYENGAR v TIRUNARAYAN, 18 Mys LJ 17

—S 110—Adverse possession—Question of—Concurrent findings—If conclusive—The question whether possession

## MYS C P CODE (1911), O. 21, R. 63

Iyengar, JJ) NANJAPPA SETTY v HASSAIN DEE 17 Mys LJ 510=45 Mys HC 57  
—S 115—Case decided—Interlocutory orders—Revision—Interference—Power of High Court. See 1939 Dig, Col 874.

several defendant as members of joint Hindu family and making joint family property liable—Setting aside as against one defendant—If to be set aside against all. See 1939 Dig, Col 876. MARIGA v SANJEEVIAH 18 Mys LJ 36

—O 12, R 6—Applicability—Mortgage suit—Partial preliminary and final decree for sale on admission—Fresh preliminary decree for balance—Property—If justified. See 1939 Dig, Col 876. ADINARAYANAIAH v CHENNA KRISHNIAH SETTY, 18 Mys LJ, 30

—O 21, R 16—Scope—Death of person in whose favour due under decree—Assignment by person really due under decree—Validity—Right of

O 21, R 16, C P Code, only regulates procedure and does not affect substantive rights. The person who is under a decree can deal in any manner he likes whose name the decree one he likes, and the entitled to execute the the assignment in his favour may be treated as an assignment in writing by the person who is really entitled to the money due under the decree or as an assignment by a person the decree operation of law on the death of the decree—*dul Gham and Venkataranga Iyengar, JJ*) SETTY v CHANDRAKALAPPA 18 Mys LJ, 472

—O 21, R 52 and 53—Applicability and scope—Notice to take out notice

C P Code, can be money in deposit. Even if the rule necessary that a notice should issue to Court ordering attachment is the money and therefore an order direct is a sufficient compliance with the rule 21 R 52. It is only when the money is not in the hands of the Court directing notice should be taken out to the Court holding the money sought to be attached. When no notice is necessary in the case of attachment of a decree of the same Court as is provided by O 21 R 53, C P Code it is meaningless to expect notice of attachment of money in the hands of the attaching Court (*Singaravellu Madaliar and Subramanya Aiyar, JJ*)

MYS C P CODE (1911), O 21, R 90

MYS C P CODE (1911), O. 34, R 6

the ground of serious irregularities alleging that the price fetched was very inadequate the application holding that he was interested were affected by the sale and not maintain the application

Held, that the 2nd defendant's interests were very seriously affected by the sale and was entitled to attack the sale under O 21, R 90 C P Code because if the decree was confirmed and the decree remained unsatisfied the 2nd defendant was liable to be proceeded against for the deficiency (Rally C J and Subramania Aiyar, J) ANANTARAJAYYA v THIMMA-  
RAYAPP

Proceed asking  
Government—Power of Co  
stay—Proper procedure

In dealing with a case execution the Court is which is laid down in O 21 R 90 to 103 C P Code

guardian ad litem for a minor defendant, though notices guardian who the execution an irregularity resulting there

from to the minor concerned, would not afford a sufficient ground to set aside the sale (Agerwara Iyer and Venkataranga Iyengar JJ) VENKATASAMI v SUBBA RAO 18 Mys LJ 333-45 Mys H O R 269

—O 32, R 7—Construction and scope—Leave of Court—Express recording of—Duty of Court—Court aware of existence of minor and granting leave—Suffi-

to be vacated—Rule

Revenue Act the Court acts wrongly in taking cognizance of the letter and staying proceedings as that

cient to invalidate the decree passed in such suit or appeal if the hearing had proceeded without objection

COMMISSIONER BANGALORE 18 Mys LJ 301  
—O 21 R 103—Burdens of proof—Suit by defeated obstructor—Onus—Proof of possession on date of

of the minor, and he was effectively represented by a relation such as a brother, and also by counsel who had power for the minor from the guardian when he was

final decree—Time for passing  
Hindu father—Finding that  
on sons

as a personal  
in a mortgage

**MYS C P CODE (1911), O 34, R 6**

decree under O 34, R 6 C P Code, should not be passed until after the mortgaged property had been sold and the proceeds found insufficient to pay the mortgage money. This is particularly so in the case of a suit on a mortgage executed by a Hindu father which is found to be invalid as against his sons since the final decree would nullify the effect of the sons' shares in the family property and under the mortgage for the mortgagee de *Ghani, O C J and Venkata Ranga Iyengar, J*) **THE BANK OF MYSORE, LTD BANGALORE CITY v VEERAPPA** 18 Mys LJ 113 = 45 Mys HCR 26  
—O 34 R 6—Scope—Omission to pass formal decree—Execution against other properties of judgment-debtor taken by Court without objection—Sale—If void—Suit by judgment debtor's heir several years later to set aside sale and for possession—Maintainability

It cannot be held that the absence of a formal decree under O 34 R 6, C P Code, renders execution proceedings void and necessarily vitates an order made in doubt under the C P Code, after the property is sold, a decree holder has a personal decree against the mortgagor due to him so as to enable him to execute against judgment debtor's other property. The date of the application for execution is not a bar to the judgment debtor's application for a personal decree would

by the heirs of the judgment debtor on the ground of

finding adverse to him—Right to file cross-objections *See CHIKKANAGAMMA v SIVASWAMI*

**MYSORE CO-OPERATIVE**

**MYS OR P CODE (1904), S 186**

levied under Art 11-B of Sch II of the Mysore Court-Fees Act. The relief cannot be treated as relating to the institution or its properties and court fee cannot be levied on the basis of the market value of the properties of the institution and its properties S 5 (iv) of the Act.

that the 1st defendant was interfering with his management, and he prayed for a declaration that he was the manager of the mosque and entitled to recover the rent of the shops as manager from the tenants for an injunction to restrain the 1st defendant from interfering with his managing and collecting the rents from the defendants 2 to 6 (tenants), and for another injunction restraining defendants 2 to 6 from paying rent to the 1st defendant and for a direction that in future all rents should be paid to the plaintiff

—Sch II Art 11 B—Applicability—Suit for recovery of mosque and hereof—Court fee ACT, S 4 (iv)

18 Mys LJ 489  
DE (II)  
to pro  
—False  
penalty  
criminal

## MYS CR. P. CODE (1904), S. 341.

—S 341—Discretion of High Court—Accused deaf and dumb and unable to understand proceedings—Com

44 Mys H O R 569

—Ss 435 and 438—Procedure—Conviction under S. 448, I. P. Code—Revision—Forum—Sessions Court or High Court—Practice

reference under S 438. (*Abdul Ghani, Offg C.J. and Venkata Ranga Iyengar, J.*) SEETHARAMIAH, *In re* 17 Mys L J 507—44 Mys H O R 482

—Ss. 435 and 440—Revision—Dismissal for default—Legality—Duty of Court

There is no provision in the Cr P Code, which justifies the dismissal of a revision petition on the ground that the petitioner and his advocate are absent. It is the duty of the Court in a criminal case to go into the matter and dispose of it on the merits. The dismissal of a revision petition for default is not a legal disposal. Though S 440 Cr P Code, does not confer any right of audience as of right in revision it does not mean that a Court of revision can dismiss a revision petition without applying its mind to the allegations made therein. (*Venkatarama Iyengar, J.*) MANTHIAH

—S 438—Reference and Court—Interference—Ground and when can be gone into—Defect or illegality in procedure—Effect of

Where a reference under S 438, Cr P Code, deals

except for special reasons. Where there have been several defects and illegalities in the procedure adopted, the proceedings will be quashed. (*Abdul Ghani, Offg C.J. and Venkata Ranga Iyengar, J.*) SEETHARAMIAH, *In re* 17 Mys L J 507—44 Mys H O R 482

—S 439—Scope—Enhancement of sentence—Power of High Court—Principles—Grounds for interference

High Court in showing cause against enhancement.

## MYS DT. BOARDS ACT (1926), S 87.

S. 439 (6), Cr. P. Code, was not intended to affect the provisions of S 430, Cr. P. Code, and it is well-established

appeal preferred by himself or by proceedings in revision instituted by himself. Therefore where an accused person has not appealed against his conviction at all, it may be open to him to claim the right of attacking the

14 Mys L J 486

—S 495 (3)—Scope and effect—Vakalat executed by minor—If invalid—Contract Act, S 11. See 1939 Dig, Col 886 RAMAPPA v LAKKANNA

18 Mys L J 26.

—S 517—Discretion of Court—Disposal of property—Rule

Under S 517, Cr. P. Code, the trial Court is given a wide judicial discretion as regards disposal of property. The ordinary rule is that if no crime is made out, the Magistrate should return the property to the person from whom it was seized unless there are special circumstances which would render such a course unjustifiable. (*Venkatarama Iyengar, J.*) RAVI GOWDA v HANUMANTHIAH

18 Mys L J 454

—S 522—Order restoring possession—Execution

## MYSORE DISTRICT BOARDS ACT (III OF 1926) S 71—Construction and scope—Amounts recoverable under Ch VII—If converted into toll or fee

Act See MYSORE DISTRICT BOARDS

18 Mys L J 374

—S 71—Applicability—Right to collect tolls at

markets or market fees—Lease by District Board farming out—Suit for money due under—If one for "any sum due to the District Board under this Regulation, etc."—Limitation applicable

Money due to a District Board under a lease entered into by it with a person to whom the right to collect tolls at shandies or market fees is farmed out cannot be described as "any sum due to the District Board" within the meaning of

cover the dues under the lease. (*Abdu*

**MYS HINDU WOMEN'S RIGHTS ACT (1933).**

*J. and Singaradu Mudaliar, J.* **ABDUL RAHIMAN**  
BANGALORE DISTRICT BOARD.

18 Mys L J. 374.

**MYSORE HINDU WOMEN'S RIGHTS ACT**

(X OF 1933)—Scope and effect of—Female member of joint family—Right to claim possession as against manager of the members—If coparceners. See 1939 I CHIKKANAGAMMA v SIVASWAMY

44 Mys H O R 473

—S 8 (1) (a)—Construction—"Who have left no male issue"—Meaning and effect of—Son dying leaving issue—Subsequent

S 8 (1)

(a) must be

had a son by her husband, when such son is dead and not alive on the date of such partition. (*Reilly, C.J. and Venkataranga Iyengar, J.*) **NARASIMHA SETTY v NAJAMMA.**

18 Mys L J. 461

—S 8 (1) (d) and (5)—Applicability and scope of—Joint family of two brothers—Death of one leaving widow and no son—Suit for partition and possession of quarter-share by widow of deceased—Maintainability—Pleadings—Amendment—Addition of claim to maintenance alternatively to claim for share

Plaintiff, widow of one S, sued her husband's brother for partition and possession of a quarter-share of the property which she alleged had belonged to her husband and the defendant. The plaintiff's husband died on 7-6-1937, and the suit was filed on 30-1-1938. She alleged that her husband and the defendant been the only coparceners of their joint family on her husband's death the defendant became surviving coparcener of the family S left no

of the suit.

**DAKSHINAMURTHY v. SUBBAMMA**

18 Mys L J. 191—45 Mys H C R 102

**MYSORE INSOLVENCY ACT**

Ss 4 53 and 54—Scope—Powers of—Transfer by transferee from insolvent united

S. 4 of the Insolvency Act confers on the Insolvency Court to deal with title or priority or of any nature which might arise for consideration. These

**MYS LAND ACQ. ACT (1894), S. 23.**

in any way limited by Ss. 53 and 54 of the Act. The Insolvency Court has power under S. 4 to annul not only a transfer by the insolvent, but also a transfer by the transferee from the insolvent at the instance of the Receiver, when the transactions attacked are links in a chain of transactions intended for the benefit of the creditors.

*Iyengar, J.J.*

18 Mys L J. 386—45 Mys H C R. 303.

**MYSORE LAND ACQUISITION ACT (VII OF 1894), S 23 (1), (3) and (4)—Applicability—Compensation under in addition to market value—When awardable**

Taking S. 11 and S. 23 of the Land Acquisition Act together, the compensation which can be awarded under land acquired with the addition is appropriate

considerations set out or damage by reason of severing the acquired land from the other land of the person interested can be awarded under Cl (3) of S. 23 (1) only when the severance of the part acquired from the part remaining with the person cause damage in itself to the claimant. Where no such damage is caused no such compensation can be awarded. Nor can compensation be awarded under Cl (4) of S 23 (1) by reason of the acquisition injuriously affecting the other property of the claimant on the ground that difficulty of access to the remaining unacquired parts of the land, when such difficulty of access is caused not by the acquisition itself, but by the construction on the acquired parts of a great reservoir extending many miles, with a long arm rendering access to the remaining unacquired parts of the land more difficult by the long distance

18 Mys L J. 178—

44 Mys H C R 488

and 30—Persons interested—Persons permanent leases from swami or head of tion of lease by succeeding swami—Effect ants to claim share in compensation on—Poss-

and

bind-

ion is

noting

resume the property; or if he so chooses, he may release

MYS LEGAL PRACTITIONERS ACT, S. 10.

MYS. REL. ETC., ACT 1927), S. 40.)

respect of all parties  
those who were actual  
(*Reilly, C.J. and*  
*OREIGN AGENCY v.*  
*1 Mys.H.O.R. 558—*  
*18 Mys.L.J. 212.*

**INSTRUMENTS ACT**  
and effect—Promissory  
offering to pay interest

expect any priv<sup>in</sup>  
Court when he is out

Magis<sup>t</sup>  
provisi  
Act.

defect of character which makes him liable to punish  
ment or to removal by the High Court (*Reilly, C.J.*  
*and Singaravelu Mudaliar, J.*)  
OF MYSORE *v.* T. RAMACHAR.

—Ss 10 and 13—*Proceedin*  
*who has been convicted under S 73 Police Act for dis*  
*obedience of order under S 39 Police Act—Provisory of*  
*conviction or of order—If can be gone into*

Where a legal practitioner is proceeded against under  
Ss 10 and 13 of the Legal Practitioners Act on the

interest could be recovered

*Held*, that the letter, the promissory note and the  
all be taken together as  
seen the parties, and that  
parties showing the pay-  
of Rs 1—8—0 and later  
Rs 1—4—0 per cent per mensem should also be taken  
into account and that S 92, Proviso (2) applied S. 80  
of the Negotiable Instruments Act should not be read as  
depriving the plaintiff of a contractual right of interest.  
The section conferred a right to interest and did not

The words "decision passed on review" in Col. 3 of  
Art. 182(3) of the Limitation Act apply equally to a  
decision which is the result of the decision on a review  
out of his way and decides such matters, his order is  
*ultra vires*. Civil Courts are not debarred from entertain-  
ing and deciding matters which are not within the  
jurisdiction of the Court.

**MYSORE ROAD TRAFFIC AND TAXES ACT (VI OF 1935)—Rules under—Sale of right to collect toll—Position of Revenue Commissioner and Commissioner—If agents of Government—S**

**MYS T P ACT (1918), S 83**

**PROPERTY ACT (IV and (e)—Construction—**

i) (b) and (e) of S 6 T  
d is not used  
transferred  
also become  
o (Abdul

GOSWAMI v CHIEF SECRETARY  
OF MYSORE

**LJ 159=44 Mys H C R 606**

scability—Transfer of right to  
with transfer of property—

Commissioner and Deputy Commissioner in Mysore in  
respect of sales of the right to collect toll hold the posi-  
tion of an auctioneer on behalf of the Government

A claim for the right to collect toll is not a sale of property

accept one, that will not bind the Government and the  
Government has power to cancel the sale by tender

**10 THE GOVERNMENT OF MYSORE**

**18 Mys LJ 159=44 Mys H C R 606**

There is no bar to the Government's power to cancel the sale by tender  
be exerci-  
out in s  
for ten  
which

— S 59, 1935, 111 D. 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

**18 Mys LJ 166=**

**44 Mys H C R 589**

scability—Fraudulent transfer—  
fide and valuable consideration  
editor to another—If voidable

**MYSORE OF 1911)**  
property—  
small cause

jurisdiction—Attachment of immovable property—  
Validity in the absence of transfer of decree to original  
side See **MYSORE C P CODE S 7, O 21 R 82 AND**  
**O 50 18 Mys LJ 74 (FB)**

prefer any  
ceedings t  
of others  
material  
Iyengar

**MYSORE STAMP ACT (II OF 1900), S 36—Scope**  
—Document not properly stamped—Collection of duty  
and penalty under S 36

**18 Mys LJ 97**

— S 36—Scope and effect—S 36 to avoid transfer  
on his own behalf

— S 36—Scope and effect—S 36 to avoid transfer  
on his own behalf

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on his own behalf

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on his own behalf

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on his own behalf

**"tobacco"—Law of octroi on cigarettes and beedis—**  
**Legality**  
The word "tobacco" in the bye law framed under  
S 61 of the Mysore T. & T. Act, 1911, includes  
cigarettes and beedis and a tax or charge must be sh-  
clear and unambiguous language (*Nagendra*  
*Singaravelu Mudaliar, JJ*) **TOWN M.**  
**COUNCIL, NANJANGUD & NANJUNDAPPA**  
**18 Mys LJ 111**

interest after deposit—Mortgagee refusing to accept—  
Withdrawal by mortgagee—Effect  
A deposit of money by the mortgagee in Court under

stood before the  
not provide for a  
provided that the  
creditor who was  
individual creditor  
behalf and ask for  
the section as it  
! Ghani, Off C J  
! LAKSHI GOWDA v  
**18 Mys LJ 87**  
Liability to pay

## NAMBUDRI ACT (1933)

the absence of such proof by the mortgagee and where it is seen that the mortgagor has already been willing to pay, the mortgagee would interest from the date of deposit in to the mortgagee to accept the mortgage. (Abdul Ghani, O.C.J. and Venkatar SUBBANARAYANA & RAMACHANDRI)

18 Mys LJ 196=45 Mys H.C.R. 109

## NAMBUDRI ACT (XXI OF 1933) See MADRAS ACTS

## NEGOTIABLE INSTRUMENTS—Hundi—Consideration—Absence of—Burden of proof

If in a suit based on a hundi the order of its execution, the burden of proof that the consideration heavily lies on him

R 187 IC 225

A

v NEMICHAND 187 IC 225

—Promissory note—Accommodation note—Endorsement—Consideration

One C paid money to A whom B wished to be accommodated. A passed a promissory note to B who endorsed it to C.

Held that B was in the position of surety and the endorsement was for consideration.

(Davis J.C. and W. KISHINDAS 191 IC 58)

—Promissory note by family—Endorsements—If as

of endorsee to sue other members of family on debt. See 1939 D.G., Col 897 KALIANA THEVAN v MUTHUSWAMI GOUNDAN 189 IC 775=

13 R.M. 322=1939 M.W.N. 1243=

AIR 1940 Mad 174

—Promissory note—Consideration

It cannot be said that the consideration for a promissory note is always the amount stated to be payable in the note. (Roberts, C.J. and Dunkley, J.) ABDUL AZIZ v MAUNG PE TINT 189 IC 384=

13 R.R. 36=AIR 1910 Rang 152

—Promissory note—Construction—Place of payment—Promissory note addressed to a person of a particular

## NEGOTIABLE INSTRUMENTS

defendant In such a case a decree cannot be granted

instruction—Use of words promise to pay on demand—Payment to be made within three years—Nature of document

Where a document starts with the words 'on demand I promise to pay' but subsequently says that the principle

sufficiently stamped

or for any other

UKARAM v RAM

187 IC 367=

AIR 1910 Nag 215

—Promissory note—Insufficiently stamped—Contemporaneous agreement—Admissibility

Although a promissory note is inadmissible in evidence being insufficiently stamped the creditor is entitled to sue on the basis of a separate contemporaneous agreement to pay. (Griffith J.) MAHADEO TUKARAM v

187 IC 367=

1910 N.L.J. 658=

AIR 1910 Nag 215

—Promissory note—Liability under—Onus to prove exemption from

Where the promissory note is produced and execution is admitted, the burden of proof lies on the executant to excuse himself from payment. (Roberts, C.J. and Dunkley, J.) ABDUL AZIZ v MAUNG PE TINT 189 IC 384=

13 R.R. 36=AIR 1910 Rang 152

—Promissory note—Original cause of action—Release—Note inadmissible

It is open to a creditor, in spite of the fact that the

promissory note is not the original cause of action, to sue on the basis of a contemporaneous agreement to pay.

(Griffith J.) ABDUL AZIZ v MAUNG PE TINT 189 IC 384=

13 R.R. 36=AIR 1910 Rang 152

—Promissory note—Place of payment. See CON-TRACT ACT, S. 49.

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—Promissory note—Place of payment. See CON-TRACT ACT, S. 49.

It is well settled that in cases where the original instru-

ment is not produced, the creditor is not entitled to sue on the basis of a contemporaneous agreement to pay.

(Griffith J.) ABDUL AZIZ v MAUNG PE TINT 189 IC 384=

13 R.R. 36=AIR 1910 Rang 152

—Promissory note—Place of payment. See CON-TRACT ACT, S. 49.



## NEGOTIABLE INSTRUMENTS ACT (1881),

S 4

mark of thumb impression was taken from B who went away while the instrument was being written. In a suit on the note, A did not defend the suit. But the lower Court dismissed the suit entirely.

*Held*, (1) that as there was no execution by B or by a person authorised to execute on his behalf, B was

whether the instrument was signed by A on the faith

—Ss. 4 and 20—*Relative scope and effect of—Signed and stamped paper handed to person described as kind note—Latter inserting name of third person as payee—Suit by payee—Plea that instrument was not executed to payee but to some one else—If open—Payment to third person—If can be pleaded—S 78*

There is no force in the contention that S 20 of the Negotiable Instruments Act does not authorise the person to whom a stamped and signed paper is delivered to insert in it as payee the name of any one but himself. There is nothing in S 4 of the Act which in any way

and it is not open to the executant (defendant) in a suit

—S 8—"Holder"—*Premis*  
*Hindu joint family firm—Suit by all adult members—Complicity.*

Hindu coparceners governed by the Mitakshara law, carrying on a joint family business, can institute in their individual names a suit to recover a debt on a promissory note obtained in the name of the family firm. The

## NEGOTIABLE INSTRUMENTS ACT (1881),

S. 22

who are capable in law of giving a satisfactory discharge, to recover the debt on the promissory note executed in their trade name is maintainable. (*Wassodeo and Indarnarayan, JJs.*) DANIEL v. MANMOHANDAS LALLUBHAI.

I L R (1910) Bom 153 =  
188 I C. 618 = 13 E. B. 11 = 42 Bom L R 218 =

A L R 1910 Bom. 164.

and 60—*Scope—Promissory note pay*

—*Payment by maker to payee before*

*left in payee's hands—Indorsee from*

*payee for value without notice—Right to recover from*

ever applied

d as overdue

4 bears date

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for value,

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payable

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e payee a

guarantee he acts at his own risk. If the payee subsequently indorses the instrument over to a third person who pays value and has no knowledge of the payment by the maker, the indorsee, as a holder in due course, is entitled to a decree for the amount in a suit against the maker (*Leach, C J, and Krishnarwami Ayyangar, J.*)

GOPALAN

—S 9—*Suit on promissory note—Admission that some*

suit on a promissory note

ll due on the promissory note

r the same whether he sues

on the footing that he is a

CKALINGAM CHETTIYAR v.

189 I O 715 = 13 E B 49 =

A L R 1910 Rang 170.

—Ss 9 and 118 (g)—"Holder in due course"—

*Presumption of valuable consideration—Onus.*

The term "holder in due course" as defined in S 9

means a person who gives consideration. Therefore

where the plaintiff institutes a suit on a promissory note as a

holder in due course the presumption under S. 118 (g)

is that he has given valuable consideration and the

burden of proving the contrary is on the defendant.

—S 22—*Scope—Instruments written in oriental*

language.

The proviso on ln S. 22 giving three days of grace

affects only instruments which are not written in an

oriental language. The instruments written in oriental

6 B R 308.

# NEGOTIABLE INSTRUMENTS ACT (1881), S 27

languages will be governed by any local usage which may be proved in the case. Where it is admitted in the plaint that the hand in question fell due on a certain date in accordance with the local usage or custom the operation of S 22 is excluded, and therefore the three days of

—Ss 30, 37 and 38—Drawer  
of—Nature and extent of Liability  
Col 1059 DALSUKH NATHMAL v

I L R (1940) Nag 502

—S 35—Scope—Person entrusted with money for

drawer and drawer—Liability of drawer. See 1939 Dig  
Col 900 LALLUBHAI BHIKABHAI v KATANCHAND  
187 I C 419 = 12 R B 448 = A I R 1940 Bom 82

(*Roberts, C. J. and Dunkley J.*) ABDUL AZIZ v  
MAUNG PE TINT 189 I C 384 = 13 R B 36 =  
A I R 1940 Rang 162

—S 46—Scope—Delivery of instrument to person  
advancing money and not to person whose name appears  
as payee—Sufficiency. See 1939 Dig Col 901  
SINNACHIAMI CHETTIAR v RAMASWAMI CHETTIAR  
188 I C 48 = 12 R B 774

—S 50—Indorsee of promissory note executed by  
Hindu coparcener—Rights of us against other co

LTD, LAHORE v MAHOMED YUSAF  
187 I C 650 = 12 R L 469

—S 76 (b)—Promise to pay—If can be implied  
See 1939 Dig, Col 902 PUNJAB CO OPERATIVE  
BANK, LTD, LAHORE v MAHOMED YUSAF  
187 I C 650 = 12 R L 469

—S 76 (b)—Promise to pay—What constitutes  
See 1939 Dig, Col 902 PUNJAB CO OPERATIVE  
BANK, LTD, LAHORE v

—S 76 (d)—Drawer  
Presentment, if necessary

# N W F P COURTS REGN. (1931), S, 7

PUNJAB CO OPERATIVE BANK, LTD, LAHORE v  
MAHOMED YUSAF 187 I C 650 = 12 R L 469

—S 78—Promissory note—Suit by beneficial owner  
—Claim to decree on ground that payee is only a  
benamidar of plaintiff—Maintainability. See 1939 Dig,  
Col 902 T A V VEERARAGHAVASWAMI v  
A 189 I C 685 = 13 R B 311 =

A I R 1940 Mad 80  
—Scope—Suit by payee of handnote—Plea  
t to third person—Maintainability. See  
E INSTRUMENTS ACT, SS 4 AND 20

6 R B 398  
—Construction—Material alteration—When  
ament void—Alteration not by party or heir  
ger—Promissory note devolving on minor—  
eration by stranger—Suit by minor—Right

A I R 1940 Mad 62  
—S 87—Material alteration—Meaning of—Altera

—S 118—Applicability—Suit on debt evidenced by  
promissory note—Presumption of consideration—If  
arises

(*J.*)  
under  
dence to prove that debt under instrument executed after  
1932 was incurred before 1932 and that instrument is  
renewal of earlier one—Admissibility. See 1939 Dig,  
Col 904 ANANDAM v MUTHUKUMARASWAMI  
MUDALI 186 I C 458 = 12 R B 638 =  
A I R 1940 Mad 62

ting alone  
An accused was tried for an offence under S 302/  
120 B Penal Code, and was sentenced to death by  
Sessions Judge. When the appeal from the sentence of  
death came for hearing it was not practicable to consti-  
tute a Bench as an Additional Judicial Commissioner  
was on leave for two months and the Judge appointed in  
his place was disqualified to hear the appeal as he had  
received and  
able to sit w  
seal was

## N W F P. COURTS REGN (1931), S 34

*Held* that the Court of Judicial Commissioner sitting alone was properly constituted and had the jurisdiction to confirm the sentence of death

*Held further*, that appeal journeyed until the return of the *Wright*) MIRZA AKBAR *v*

190 IC 233=13 F . . .

1940 M W N 11

7 B R 118=1

41 Cr LJ 871=1940 A L

1940 O L R 619=A I R 1940 P C 176=

(1940) 2 M L J 811 (P C)

—S 34—Valuation of suit below Rs

tion—If competent—Government of I S. 224

Where the valuation of the suit is below ru

S 34 N W F Province Courts

Government of India Act are a

jurisdiction on the revision side

missioners' Court (*Mir Ahn*

GIAN CHAND *v* MD YAQUB KHAN

A I R 1940 Pesh 56

1940 A W R (C C) 316=A I R 1940 Oudh 314.

—S 11—Construction—Application under O 21,

R 100—Special oath taken by applicant—Order allow

ing application—Appeal by other side—Competency—

Oath taken in claim—If conclusive in suit also

Mahomedan law the rule of decision takes

which arises before the Court

force The legislature did

tion between cases in which

the enactment of Act VI o

or less a rule of procedure

the date on which that

force (*Almond, J C ana*

*v* DAWAR SHAH

1940 A L J

1940 A L J

1940 A L J

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## ORISSA TENANCY ACT (1913), S 16.

ABDUL AZIZ 189 IO 687=13 R Pesh 15=

A I R 1940 Pesh 26

—S 9—"Any party to any judicial proceeding—

may become necessary, even though no

express power to compromise the case on his behalf may

pleader

he client

entering to

For the

pleader

considered a duly authorised

s party to conduct the case

ATHURA PRASAD *v* SITA RAM.

187 IC 889=12 E O 411=

1940 O W N 662=1940 O A 611=

1940 A W R (C C) 316=A I R 1940 Oudh 314.

—S 11—Construction—Application under O 21,

R 100—Special oath taken by applicant—Order allow

ing application—Appeal by other side—Competency—

Oath taken in claim—If conclusive in suit also

can be only in favour of

be by a tenant in possess

occupancy plot is with the

valid relinquishment (f

PRASAD *v* CHUNNI

1940 A L J

1940 A L J

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Under S 8 of the Oat ministered by the Court not be against decency and that it should not affect the rights of a third party Where during the trial the

Construction—Landlord's right to transfer (see—Applis- cation by tenant for registration of transfer—If condi- tion precedent—Landlord entering name of transferee in

## ORISSA TENANCY ACT (1913), S 16

*register and taking Kabuliat from him—Effect of—Right to transfer fee.*

S. 16 of the Orissa Tenancy Act cannot be construed as meaning that a landlord is not entitled to the transfer fee unless and until the transferee makes an application for recognition of the transfer, S. 16 does nothing more than place a duty upon the transferee to move, in the sense

he is entitled to claim the transfer fee, in spite of the fact that the transferee has not applied for recognition of the transfer as required by S. 16. enters the transferee's name in his days later the transferee executes a deed of the landlord, it must be held that he has consented to the transfer, and the transferee is entitled to claim the fees provided in the Act. (Harris, C. J. and Woot, J.) R. THAKUR v. SUSHIL KUMAR ROY.

6 Cut. L. T. 19=7 B. R. 128=

*—S. 16—Transfer fee—Right to transfer for registration of name—If essential.*

entitled to his fee. (Mohamad Noor, J.) CHARU CHANDRA ROY v. SRI RADHA GOBINDA JIU THAKUR.

6 Cut. L. T. 13

execute such a decree. But where the de-

*—Ss 104 and 105—Applicability—"Co-owners"—Co-owners of dedicated property—If can be proceeded against as co-owners.*

The word "co-owners" in Ss 104 and 105 of the Orissa Tenancy Act is not a term of art, and the verb "own" is not confined to the sense of "be proprietor of", but also means possess. There is little practical

(Harris, C. J., Dhillon and Roulant, J.J.) RAMDEB DAS v. COLLECTOR OF CUTTACK.

19 Pat 600=

## ODDH CHIEF COURT RULES, Ch. XX. R. 7.

189 I. C. 329=13 R. P. 73=6 B. R. 785=6 Cut. L. T. 49=21 Pat. L. T. 668=1940 P. W. N. 399=

A. I. R. 1940 Pat. 304 (F. B.).  
—S. 204—Revision—Collector—Order by in appeal in case valued below Rs. 100—Revision by High Court. See C. P. CODE, S. 115. A. I. R. 1940 Pat. 249.

—S. 204 (2) and (3)—Question of title—Rent suit due below Rs. 100 before Deputy Collector—Transferee impleaded as party defendant—Decision—If question of title—Appeal—Jurisdiction—Collector—Revision to High Court from Collector's decision on appeal—Competency.

ed to a decision on a question relating to title to

rent is payable owing permanent and complete deterioration of land due to diluvion—Decision upholding plea—Appeal—Forum—Collector or District Judge

When a tenant sues the defendant pleads that the rent, is claimed had entirely diluvion permanently unfit for cultivation, and that the defendant is not liable to pay the rent, as the lands had been completely and per-

## ODDH ACTS AND RULES

Chief Court Rules.

Civil Rules

Courts Act (IV of 1925)

Estates Act (I of 1869)

Land Revenue Act (XVII of 1876).

Laws Act (XVIII of 1876)

Rent Act (XXII of 1886)

Ch. XX, R. 7—  
Bench reader's duty

reader by R. 7 of Rules, is not of a partly ministerial nature of the judgment. It is only a ministerial act. (Harris, C. J., Dhillon and Roulant, J.J.) (Zia-ul-Haque and Yousaf, J.J.) 188 L. C. 720=

# ODDH CIVIL RULES, Ch VI, R 279.

1940 A Cr C 84=1940 A WR (CC) 234=  
1940 O L E 389=41 Cr L J 682=1940 O A 448=  
1940 O W N 520=A I R 1940 Oudh 371

# ODDH CIVIL RULES Ch VI R 279 Sub-R 51 —Applicability—Claim for return of trust money for liquidator of Bank

Sub rule 51 of R 279 of Ch VI of the Oudh Civil  
Rules has no application to the case of a claim for the

of payment of the claim due to him (*Zia ul Hasan  
and Yorke, Jf*) DINSHAW AND CO v KRISHNA  
PIARY 1940 O A 991=

1940 A WR (CC) 433=1940 O W N 1022

—Ch VII, R 289—Allowing of actual costs—  
Justifying circumstances

circumstances met  
plaintiff than he  
rules of  
RAM C

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ODDH

Appeal against order of remand under  
If lies

No appeal lies under S 12 (1) of

—S 12 (2)—Certificate under—Grounds for gran-  
ting

A certificate of fitness for a further appeal under  
S 12 (2) of the Oudh Courts' Act should be granted  
only when the decision from which a further appeal is  
proposed to be preferred is (1) opposed to any general  
principle of law, or (2) involving  
interest, or (3) is contrary to any  
The interpretation of a document

—S 12 (2)—New point, if can be raised in appeal  
under.

—S 7 and Oudh Land Revenue Act  
(XVII of 1876), S 40—Pre-emption—Muafidar  
—If entitled to—Right of

summed  
village  
neither  
case,  
Reve

Act Where a person is a muafidar paying  
nt, he is not helped by S 40 of the Oudh  
Revenue Act and when he is neither an  
-proprietor nor a proprietor, there can be  
no pre-emption under the Oudh Laws Act  
(Hamilton, J) PARBHU DAYAL v BISHESH-

—S 9—Scope and applicability of—Last clause of,  
when comes into operation

by last legatee—Validity—Nature of estate taken—  
Obscure condition—Effect of See 1939 Dig Col 906

—S 9—Scope and applicability of—Last clause of,  
when comes into operation

—S 9—Scope and applicability of—Last clause of,  
when comes into operation

—S 9—Scope and applicability of—Last clause of,  
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when comes into operation

—S 9—Scope and applicability of—Last clause of,  
when comes into operation

# ODDH LAWS ACT (1876), S, 9.

ALI RAZA KHAN v NEWAZISH ALI KHAN

14 Luck 666

—S 23—Ordinary law—If includes primogeni-  
ture sanad—Existence of primogeniture sanad—If con-  
clusive proof as to estate being governed by it

Primogeniture sanad forms part of and is included in  
'ordinary law' within the meaning of S 23 of the Oudh  
Estates Act But its existence by itself, is no conclusive

ed by it  
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it or that he has rendered the estate valid ne  
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# ODDH LAWS ACT (1876) S 9

The order of preference mentioned in S 9 of the Oudh Laws Act comes into play only when more than one person mentioned in the section actually exercise their right of pre-emption by instituting a suit. The last sentence shows that where all rival pre-emptors are equally entitled to exercise that right, then the Court shall determine that right by drawing a lot. Hence it

of proprietary property and under-proprietary tenure

An under-proprietor has no right of pre-emption in respect of a transfer of proprietary property, but a proprietor, which would apparently mean and include any member of the village proprietary community has such a right in it. An under-proprietor has no right of pre-emption in respect of a transfer of proprietary property, but a proprietor, which would apparently mean and include any member of the village proprietary community has such a right in it.

—S 6  
empt with  
payment of

Where a property and the pre-emption is attached to the property

conveyance charges or interest

Per Division Bench—Where in the case of a sale it is found that a fictitious price has been deliberately entered the Court, in a suit for pre-emption is justified in taking the fair market value of the property sold and the pre-emptor would be entitled to pre-emption not on the amount paid by the vendee, but on the market value. In such a case it was held that the vendee was not entitled either to the conveyance charges or to interest. (1914) 1 O.L.R. 211 and 212 and 213 and 214 and 215 and 216 and 217 and 218 and 219 and 220 and 221 and 222 and 223 and 224 and 225 and 226 and 227 and 228 and 229 and 230 and 231 and 232 and 233 and 234 and 235 and 236 and 237 and 238 and 239 and 240 and 241 and 242 and 243 and 244 and 245 and 246 and 247 and 248 and 249 and 250 and 251 and 252 and 253 and 254 and 255 and 256 and 257 and 258 and 259 and 260 and 261 and 262 and 263 and 264 and 265 and 266 and 267 and 268 and 269 and 270 and 271 and 272 and 273 and 274 and 275 and 276 and 277 and 278 and 279 and 280 and 281 and 282 and 283 and 284 and 285 and 286 and 287 and 288 and 289 and 290 and 291 and 292 and 293 and 294 and 295 and 296 and 297 and 298 and 299 and 300 and 301 and 302 and 303 and 304 and 305 and 306 and 307 and 308 and 309 and 310 and 311 and 312 and 313 and 314 and 315 and 316 and 317 and 318 and 319 and 320 and 321 and 322 and 323 and 324 and 325 and 326 and 327 and 328 and 329 and 330 and 331 and 332 and 333 and 334 and 335 and 336 and 337 and 338 and 339 and 340 and 341 and 342 and 343 and 344 and 345 and 346 and 347 and 348 and 349 and 350 and 351 and 352 and 353 and 354 and 355 and 356 and 357 and 358 and 359 and 360 and 361 and 362 and 363 and 364 and 365 and 366 and 367 and 368 and 369 and 370 and 371 and 372 and 373 and 374 and 375 and 376 and 377 and 378 and 379 and 380 and 381 and 382 and 383 and 384 and 385 and 386 and 387 and 388 and 389 and 390 and 391 and 392 and 393 and 394 and 395 and 396 and 397 and 398 and 399 and 400 and 401 and 402 and 403 and 404 and 405 and 406 and 407 and 408 and 409 and 410 and 411 and 412 and 413 and 414 and 415 and 416 and 417 and 418 and 419 and 420 and 421 and 422 and 423 and 424 and 425 and 426 and 427 and 428 and 429 and 430 and 431 and 432 and 433 and 434 and 435 and 436 and 437 and 438 and 439 and 440 and 441 and 442 and 443 and 444 and 445 and 446 and 447 and 448 and 449 and 450 and 451 and 452 and 453 and 454 and 455 and 456 and 457 and 458 and 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709 and 710 and 711 and 712 and 713 and 714 and 715 and 716 and 717 and 718 and 719 and 720 and 721 and 722 and 723 and 724 and 725 and 726 and 727 and 728 and 729 and 730 and 731 and 732 and 733 and 734 and 735 and 736 and 737 and 738 and 739 and 740 and 741 and 742 and 743 and 744 and 745 and 746 and 747 and 748 and 749 and 750 and 751 and 752 and 753 and 754 and 755 and 756 and 757 and 758 and 759 and 760 and 761 and 762 and 763 and 764 and 765 and 766 and 767 and 768 and 769 and 770 and 771 and 772 and 773 and 774 and 775 and 776 and 777 and 778 and 779 and 780 and 781 and 782 and 783 and 784 and 785 and 786 and 787 and 788 and 789 and 790 and 791 and 792 and 793 and 794 and 795 and 796 and 797 and 798 and 799 and 800 and 801 and 802 and 803 and 804 and 805 and 806 and 807 and 808 and 809 and 810 and 811 and 812 and 813 and 814 and 815 and 816 and 817 and 818 and 819 and 820 and 821 and 822 and 823 and 824 and 825 and 826 and 827 and 828 and 829 and 830 and 831 and 832 and 833 and 834 and 835 and 836 and 837 and 838 and 839 and 840 and 841 and 842 and 843 and 844 and 845 and 846 and 847 and 848 and 849 and 850 and 851 and 852 and 853 and 854 and 855 and 856 and 857 and 858 and 859 and 860 and 861 and 862 and 863 and 864 and 865 and 866 and 867 and 868 and 869 and 870 and 871 and 872 and 873 and 874 and 875 and 876 and 877 and 878 and 879 and 880 and 881 and 882 and 883 and 884 and 885 and 886 and 887 and 888 and 889 and 890 and 891 and 892 and 893 and 894 and 895 and 896 and 897 and 898 and 899 and 900 and 901 and 902 and 903 and 904 and 905 and 906 and 907 and 908 and 909 and 910 and 911 and 912 and 913 and 914 and 915 and 916 and 917 and 918 and 919 and 920 and 921 and 922 and 923 and 924 and 925 and 926 and 927 and 928 and 929 and 930 and 931 and 932 and 933 and 934 and 935 and 936 and 937 and 938 and 939 and 940 and 941 and 942 and 943 and 944 and 945 and 946 and 947 and 948 and 949 and 950 and 951 and 952 and 953 and 954 and 955 and 956 and 957 and 958 and 959 and 960 and 961 and 962 and 963 and 964 and 965 and 966 and 967 and 968 and 969 and 970 and 971 and 972 and 973 and 974 and 975 and 976 and 977 and 978 and 979 and 980 and 981 and 982 and 983 and 984 and 985 and 986 and 987 and 988 and 989 and 990 and 991 and 992 and 993 and 994 and 995 and 996 and 997 and 998 and 999 and 1000

ODDH RENT ACT (XXII OF 1886) Ss 3 and 20—Muzfadar, if a tenant under S 3(10)—S 40 if applies to him

It cannot be said that a muzfadar is not a tenant within meaning of S 3(10) of the Oudh Rent Act. The principles of Hindu joint family property are not applicable to that holding but only those of tenancy land

# ODDH RENT ACT (1886), S 20

100 I.C. 834—1940 O.L.R. 637—  
1940 A.W.R. (C.O.) 430—1940 R.D. 411—  
1940 O.A. 814—1940 O.W.N. 847  
—S 7-A (4)—Fixation of ex propriety holding  
—Points to be considered by Court

In an application for fixation of ex propriety holding, the first point to determine is to see whether the posses

1940 R.D. 235—1940 A.W.R. (B.R.) 166  
—Ss 14 and 15—Failure to deposit purchase-money within time fixed by decree—Appel contesting amount—Competency

The right of pre-emption is not lost when the pre-

S 19 (1) Applicability—Claim for re-  
sisting to slump in prices

SAKINA BEGAM v. DURGA SAHAI  
15 Luck. 279=185 I.C. 295=  
R.O. 209 (2)=1940 A.W.R. (C.C.) 12=  
1939 R.D. 632=1939 O.W.N. 1141=  
1940 O.A. 16=AIR 1940 Oudh 132

—S 19 (1)—Construction—Sanction of Deputy Commissioner—Necessity in each case—General order allowing remission—if not sufficient

The only construction to which the language of S 19 (1) of the Oudh Rent Act lends itself is that a separate previous sanction of the Deputy Commissioner for remission should be obtained by a Court seized of a suit for remission before it can allow that remission

was in the contemplation of the legislature when it used the words "with the previous sanction of the Deputy Commissioner" in S 19 (1) of the Oudh Rent Act. (1940) 1 O.L.R. 1295

12 O.L.R. 1295  
1940 O.A. 16=AIR 1940 Oudh 132

—R. 20—Applicability—Transfer under U.P. Regulation of Sales Act. See U

# ODDH RENT ACT (1886), S. 20

TION OF SALES ACT, S 5 AND OUDH LAWS ACT, S 20

1940 O.A. 123  
—S 20—Applicability—Maafi holding See OUDH RENT ACT, SS 3 (10) AND 20 1940 O.A. 814

—S 20—Relinquishment by mother of minor son's holding—Validity—Test

and duly executed relinquishment

Pe *Sathe, J M*—Before the relinquishment could take effect, it must be shown that the mother acted as a person of ordinary prudence w

# ODDH RENT ACT (1886), S 108

The right to sue for ejectment follows the right to sue for arrears of rent. In a suit under S 61 of the Oudh Rent Act a decree has to be passed first for arrears of rent before an order can be passed for ejectment for the same. So a lambardar who is not the person entitled to realise rent for the holding cannot sue for ejectment.

consequent ignorance of law, cannot be pleaded as an excuse

*Harper, S M* Concurred with the commissioner

—Ss 21 and 131—Suit for possession of abandoned holding—Limitation—Starting point—Issue of notice under S 21  
DEPUTY

—Ss 32(b) and 108 (2)—Joining of two suits under—Appeal—Forum See 1939 Dig., Col 908  
JAGESHAR PRASAD v LAI NARSINGH PRATAP  
BAHADUR SINGH 15 Luck 36

—S 48—Object of See 1939 Dig., Col 908

11 and 86—Distrain—Proper remedy—Failure to avail of—Acting contumaciously towards authority—Later objections under S 77 untenability

the case of a distrain the ordinary and remedy is to take objections under S 86 of the Oudh Rent Act when the notice is duly served from the officer authorised to sell the distrained property and not to take the law into one's own hands and act contumaciously towards the authority that had taken the pro

—S 61—Decree under—after New U P Tenancy Act ACT, S 296—SCOPE OF

—S 61—Extension beyond decree holder—Non payment etc

—Termination of tenancy, if automatic

A decree holder can give extension of time beyond the 6 weeks of grace given by the decree, but if payment is not made at the end of that period, the moment the time granted comes to an end the decree becomes final and the tenancy is ended. The decree holder has not to come to Court again and ask for a fresh order (*Melita, J M*)  
SHEO SAGAR LAL v MAHADEO SINGH  
1940 E D 7=1940 A W R (B R) 9

—S 61—Scope and effect of

S 61 of the Oudh Rent Act is very clear. When an order for ejectment is passed, a period of 6 weeks has elapsed of the arrears, there is no quest being bound to exercise its discretion of the tenant to extend the period of the tenant to extend the period of months (*Melita J M*)  
RA  
RAJA SAKH OF MASHAMDI  
1939 R D 640 (2)=1940 A

—Ss 61 and 108—Who can a Lambardar not entitled to realise r ejectment

14 Luck 698

—S 108 (9)—Applicability—Ex parte ejectment—Restoration of suit by appellate Court—Claim for compensation See C P CODE, S, 144 AND OUDH RENT ACT, S 108 (9) 1940 R D 245

—S 108 (9) (c) and C P. Code S 144—Ejectment—Reversal on appeal—Restoration of possession—Claim for compensation—Proper remedy

Where a tenant is ejected in execution of a decree but the decree is reversed in appeal, the tenant's proper remedy is to sue for compensation under S 144 C P Code

—Irregularity in ejectment—Proper remedy—Power of

# **ODDH RENT ACT (1886) S 108**

*excusing Court to extend time retrospectively under S 151, C P Code*

# **ODDH RENT ACT (1886) S 140**

1940 O.W.N. 561-1940 O.A. 552-  
 A.L.R. 1940 Oudh 337  
*passed*

*decrees  
 perates*

## **S 108**

*Tenancy extinguished*

Col 911 DEPUTY COMMISSIONER BARA BANKI v  
 BINDRA 1939 A.L.J. (Supp.) 94

## **S 108 (15)—Suits under, for profits of bazars—**

*Estimation of profits—Judgments in suits  
 years—Admissibility—Quantum of profit*

In a suit for profits of Bazars and S 108 (15) of the Oudh Rent Act the similar suits for previous years are admissible in order to enable the Court to estimate the years in suit. This is particularly so if the defendant is in possession and abstains from producing any accounts whatever. In such cases the burden of proving the actual profits lies heavily on the defendant who is in actual possession of the property (*Radha Krishna*  
 IBRAHIM

## **S 108**

claim for collection  
 1939 Dig., Col  
 RIZVI v. RAM S

## **Ss 116 &**

O 43 R 1—A

*Court passed an*

Neither S 116

make all orders

sections merely say that 'An appeal shall lie from an original or appellate decree or order. This provision is subject to the provisions of the C P Code which permits appeals only in those classes of orders mentioned in S 104 (1) and O 43 R 1. Hence no appeal lies against an order passed by a Revenue Court under S 151 C P Code (*Harper S M and Sathe J M*)

## **S 127—Applicability—Disappearance of trees from grove—Grove holder remaining in occupation of land**

## **S 127—Applicability—Perpetual lessee continuing in possession after ejectment decree**

Where in a suit for ejectment under S 52, Oudh Rent Act against a perpetual lessee, though a decree was passed on the date of the ejectment, the lessee continues in possession.

for the purpose of securing the ejectment of persons whose title to the land is not clear or who while holding with the consent of the landlord are holding without any determination of rent between them and the landlord S 127 of the Oudh Rent Act must on its terms apply to a person who was a rank trespasser before the filing of the suit and whom the landlord wishes to eject or from



# **OU DH BENT ACT (1886), S 141.**

amounts to a plea of payment or adjustment of accounts  
 t would not be  
 (Thomas, C J  
 DIA BANK v  
 186 I C 300=

—S 14:

# **OU DH TALUQDARS RELIEF**

and 4 (3) (a)—Talugdar under  
 vested in manager—Talugdar if con  
 arbitration, matters connected with the

Where the estate of a talugdar is under S 3 of the  
 Oudh Talugdar's Relief Act, put in charge of a manager,  
 the Talugdar and his heirs are by virtue of S 4 (3) (a)  
 of the Act incompetent to mortgage charge lease or  
 alienate their immovable property Hence such a  
 Talugdar is not competent to make a reference to arbi  
 tration, disputes concerning his estate and any award  
 that may be passed on such re

(Thomas C J and Bennett  
 DHYA v MADHO PERSHAD

1940 O A

1940 A W R (O)

# **PARDANASHIN LADY**

proof See 1939 Dig Col 9

RAHNAT ILAHI

—Deed by—Burden of

When relevant

The burden of proof in the case of a deed executed

# **PARDANASHIN LADY.**

—Deed by—Validity—Test—Degree of understand  
 ing necessary—Mortgage by pardanashin as trustee of  
 grandson—Deed read over and understood—Lady not  
 understanding that she was incurring personal liability  
 —Effect—If bound by deed

woman is not required to understand  
 tail of a bargain If the lady has  
 nce to understand the relevant and  
 and understands them as they are  
 and if it is also found that nothing  
 as been no undue  
 could be enough  
 tially understood  
 execution is the  
 t Though there  
 each detail of a  
 in technicalities  
 prehension of the  
 such a case the  
 whole But if a  
 a high degree the  
 not understood by  
 ided into parts or

otherwise re-formed by the Courts so as to uphold certain  
 portions of It while rejecting others Her answer to a  
 suit upon the deed is not that she has an equitable  
 defence to the enforcement of a certain stipulation but  
 that it is not her deed The protection extended to a  
 person in her situation is protection against being held  
 bound by a transaction which never had her free and

effect except that  
 as making herself  
 orrowed from the

understand that she  
 was incurring a personal liability for the loan, the deed  
 did not bind her (Sir George Rankin) IIEH

DFBVA

A W R (P C) 140=

1940 M W N 908=

1940 A L J 733=

1940 O W N 774=

21 Pat L T 655=

2 M L J 505 (P C)

Sayyads of Jhang

1940 O L R 548=13 R P C 48=1940 A L J 662=  
 1940 M W N 1101=42 P L R. 691=  
 7 B R. 49=42 Bom. L R 1139=1940 O A 819=  
 1940 O W N 787=A I R 1940 P C 147 (P C)

—Deed by—Lady unaware of inclusion of a valu  
 able item of property in a mortgage—Whole deed, if  
 affected

Where in a mortgage of lands and a house executed

A pardanashin lady is one who does not expose her  
 face to the public Among Sayyads of Jhang district  
 women who take a vow of celibacy generally lead a  
 secluded life and are to all intents and purposes pardana  
 shin (Bhids and Din Mikhomed, JJ) ZAWAR

HUSSAIN SHAH v SALE MAHOMED SHAH  
 42 P L R 644=A. I. R. 1940 Lah 515

—Disposition of property—Burden of proof

## PARDANASHIN LADY

—*Deed by—Binding character—One of the terms alone not explained to her*

A pardanashin lady is not bound by a document executed by her if one of its terms is not explained to her, although she mu the rest of the document  
MOHINI MOHAN v. BIL

—*Who is not likely to be rejected on presumption*

It is unlikely that a pardanashin lady will surrender executed by signature was taken on

## (2) PARTITION ACT

—*Allotment of pattis—Wishes of proprietors of pattis—Considerations for*

Where only two mahals are being formed the pattis have to be included in one mahal or other. It is but right in such a case that the wishes of the proprietors of the pattis should be taken into consideration in deciding in which mahal to include them. (Sathie, J. M.) RAM SWARUP SINGH v. RANESHWAR SINGH

1940 B.D. 233 (1) = 1940 O.A. 490 = 1940 A.W.R. (B.E.) 107 = 1940 A.L.J. (Supp.) 14

—*Appeal—Confirmation of partition—No appeal—Modification thereafter—If infructuous*

Where there is no appeal against confirming the partition, subsequent modification thereof by the commissioner modifying the order, cannot but be infructuous. (Sathie, J. M.) SHANKAR LAL v. MANNO

1940 B.D. 548 = 1940 A.W.R. (B.E.) 283 (1)

—*Proceedings for—Costs—Liability for—Point of time*

The costs mentioned in the partition proceedings are only an estimate and the liability arises on the date the partition is actually confirmed. The person whose name stands in the khewat on that date is liable in respect of it. (Sathie, J. M.) MAHA SUKH v. BADRI PRASAD

1940 B.D. 476 = 1940 A.W.R. (B.E.) 199 = 1940 O.A. 1071 = 1940 O.W.N. 1043

—*Proceedings for—Rule as to compactness—Waiver*

The partition proceedings require that the partition should be *chakhat* as far as possible, but if other considerations are more important, the necessity for compactness of the *chats* will have to be waived. (Sathie, J. M.) HARIHAR PRASAD MAN TEWARI v. DEORANVA

1940 B.D. 411 = 1940 A.W.R. (B.E.) 218

—*Suit for—Decree in—Defendant's right to obtain possession of his share*

No doubt in a partition suit every party, whether arrayed as a plaintiff or as a defendant, is substantially a plain in the suit and is entitled to a decree, and he can move the Court on payment of the proper stamp duty, to take steps to put him in possession of the share allotted to him. But if the Court merely passes a final decree in favour of the plaintiffs and directs that they be put in possession of their shares and it does not allot shares to the defendants, the latter cannot in an

## PARTITION ACT (1893), S. 4

application praying that a decree sheet be prepared and on payment of the requisite stamp duty they may be put in possession of the shares allotted to them. Before

(Sir George Rankin) JADUNATH ROY v. PARAMESHWAR MULLICK

67 I.A. 11 = I.L.R. (1940) 1 Cal. 255 = 44 C.W.N. 233 = 1940 O.W.N. 98 = 1940 O.L.R. 28 = 70 C.L.J. 546 = 1940 O.A. 145 = 12 R.P.C. 98 = 6 B.E. 251 = 42 Bom.L.R. 331 = 21 Pat.L.T. 237 = 1940 P.W.N. 328 = I.L.R. (1940) Kar. (P.C.) 33 = 1940 A.W.R. (P.C.) 15 = 185 I.C. 234 = A.I.R. 1940 P.C. 11 = (1940) 1 M.L.J. 97 (P.O.).

—*Suit for—Preliminary decree—Rights of parties added subsequently—If to be adjusted at time of final decree*

A partition suit in which a preliminary decree has

LICK 67 I.A. 11 = I.L.R. (1940) 1 Cal. 255 = 44 C.W.N. 233 = 1940 O.W.N. 98 = 1940 O.L.R. 28 = 70 C.L.J. 546 = 1940 O.A. 145 = 12 R.P.C. 98 = 6 B.E. 251 = 42 Bom.L.R. 331 = 21 Pat.L.T. 237 = 1940 P.W.N. 328 = I.L.R. (1940) Kar. (P.C.) 33 = 1940 A.W.R. (P.C.) 15 = 185 I.C. 234 = A.I.R. 1940 P.C. 11 = (1940) 1 M.L.J. 97 (P.O.).

PARTITION ACT (IV OF 1893), S. 4—*Applicability—Suit by sharer as plaintiff—Transferee employed as defendant—Right of plaintiff to apply under S. 4*

S. 4 of the Partition Act speaks of a transferee asking for possession. But in a partition suit each party is in the position of a plaintiff as well as a defendant, and even if the transferee be on the record as a defendant and a person having a share in the undivided property is the plaintiff, the latter is entitled to avail himself of the provisions of S. 4. (Dharia, J.) SHEODHAR PRASAD SINGH v. KISHUN PRASAD SINGH

190 I.C. 117 = 13 R.P. 176 = 6 B.E. 918

—*S. 4—Application under—When to be made—Second appeal—Application in—Competency*

An application under S. 4 of the Partition Act may be made at the appellate stage or at any stage before the final decree and can be entertained in second. (Dharia, J.) SHEODHAR PRASAD SINGH v. KISHUN PRASAD SINGH

190 I.C. 117 = 13 R.P. 176 = 6 B.E. 918

—*S. 4—Due diligence—Meaning—“Due diligence” in S. 4*

**PARTITION ACT (1893), S. 4**

the land and appurtenances which are ordinarily and reasonably necessary for its enjoyment. The section is not inapplicable to a partition of a divided family (Dharle, J.)

PRASAD SING

—S. 4—  
family—Mea

The expression "dwelling house belongin divided family" appearing in S. 4, Partiti been borrowed from S. 44, Transfer of and bears the same meaning. The word cludes a group of persons related in blood, who live in

**PARTNERSHIP AND TRADE UNIONS.**

—Debt contracted by one partner—Liability of other partner or his estate—Money borrowed by

the executor of his estate. The executor is personally

—S. 4—Transferee of share in undivided property

repartners of the partnership. The fact that no further partnership business is done does

individual partners—

—Accounts—Promissory note in favour of one

18/ LU 313-14 and 15-A I.E. 1940 Sind 19  
—PARTNERSHIP AND TRADE UNIONS—

## PARTNERSHIP ACT (1932), S. 4.

of enriching themselves by preventi

—Ss 4 and 6—Partnership—Test to determine—Agreement reciting that one party appointed another to carry on business—Power conferred on former to dismiss latter for mismanagement—Provision for sharing of profits and losses—If constitutes partnership. *See* 1939 Dig, Col. 918 **HARI SAO v GULAB CHAND**, A I R 1940 Pat 116

—Ss 4 and 6—Partnership—*Effect of—Deed*

*profits—Partnership—If created.*

Under a deed which was described as a partnership deed, entered into between the plaintiff and the defendant, the defendant undertook to keep accounts and the plaintiff was entitled to supervise the work from time to

was no share in the profits as such

*Held*, that

deed, it is

—S. 4—Partnership—*What amounts to—Change, of any effected by new Act.*

Partnership rests on agreement and so long as the agreement contemplates an outgoing and an incoming on the joint account in respect of a business, the partnership is complete and all subsequent rights and liabilities are governed by laws which relate to partnership. It is not the subsequent happenings, which determine the question but the initial agreement. If S. 4 has

—Ss 4 and 69—Single transaction—*If amounts to 'business'.*

A single transaction or venture does not amount to 'business' as mentioned in S. 4 of the Partnership Act and hence S. 69 does not apply to such a transaction. (*Ganga Nish, J.*) **NATHI LAL v. SRI MAL**

I.L.R. (1940) All 256—1940 A.W.R. (H.C.) 175—1940 A.I.J. 179—A.I.R. 1940 All 230.

## PARTNERSHIP ACT (1932), S. 69

*be registered*

Registration of a firm which has been dissolved is not contemplated by the Partnership Act (*Roberts, C.J. and Dunkley, J.*) **BILASROY v SCINDIA STEAM NAVIGATION CO., LTD**

1940 Rang.L.R. 552—

A.I.R. 1940 Rang. 294

—S. 59—Joint Hindu family firm—*Registrat*

*in name of some member—Effect of.*

**MEGHNA MAL KISHORI LAL**

42 P.L.R. 418—

A.I.R. 1940 Lah. 425.

—S. 59—Registration of firm—*Subsequent death of one partner—Effect—Firm if ceases to be registered*

*firm—Right of surviving partners to sue in name of*

*partners that when a*

*dissolution of*

*withstanding such*

*created as still registered for*

*the surviving partners whose*

*can see in the name and on*

*fresh registration after the*

*(Blackwell, J.) PRATAP-*

*CO. v. JEHANGIR BOMANJI*

I.L.R. (1940) Bom 716—

190 I.O. 148—13 R.B. 97—42 Bom.L.R. 497—

A.I.R. 1940 Bom 257.

—S. 68—Entry in register as to place of business

—Evidentiary value. *See* 1939 Dig, Col. 918. **ALI**

**MAHOMED ERRAHIM SHAKOOR v. ADAM HAJEE**

**PEER MAHOMED**, 187 I.O. 358—12 R.C. 569—

A.I.R. 1940 Cal 134.

—S. 68—*Production of certificate—Effect.*

It is impossible to permit a litigant to tender in evi-

way on to the Register of firms that such statements

can be mistaken. (*Roberts, C.J. and Dunkley, J.*)

**BILASROY v SCINDIA STEAM NAVIGATION CO., LTD**

1940 Rang.L.R. 552—A.I.R. 1940 Rang. 294

—S. 69—Applicability—Mahomedan sons inher-

ing father's business—Minority of some—If a partner

ship requiring registration. *See* 1939 Dig, Col. 919

**JAKHUDDIN v. VITHOBA**, 188 I.C. 670—12 R.M.

—S. 69—Bar of suit—Cause of action

before Act came into force—*Suit by*

*after S. 69 came into*

## PARTNERSHIP ACT (1932), S. 69

PARTNERSHIP ACT, SS. 74 AND 69—SCOPE AND APPLICABILITY OF S. 74. 1940 N.L.J. 63.

—Ss 69 and 74—Commencement of this Act in S. 74—Interpretation

The correct interpretation of "commencement of this Act" so far as S. 69 is concerned, must be the date on which that particular section came into force, that is to say 1st October, 1933, and any right accruing to an unregistered firm before that date must be held to be saved by S. 74 even if that date is after the date on which the rest of the Act came into force.

BAI. I.L.R. (1940) 13 R. 2

—S. 69—Registration Effect. See 1939 Dig. VITHOBA

—Ss. 69 and 74 (a) effect of.

It cannot be said that S. 69 of the Partnership Act applies even if the right to sue accrued before 1st October, 1933. The effect of S. 74 (a) is that the right to sue for debt but also

(Davis, J.) MED AKB 190 I.

—Ss sorry noted

If nullity. LALCHAND v. GOVINDJI. That decree was nullity on ground of suit being bad for want of registration of partnership. If open—Executing Court—Powers of.

## PATENT AND DESIGNS ACT (1911), S. 2

—S. 69 (2)—Debt due to unregistered firm transferred after Act coming into force—Transferee, if can sue for debt

Per JACK, J.—A transferee of a debt due to an unregistered firm is not entitled to bring a suit to recover the amount of the debt, since the firm itself had no right of suing for that debt under S. 69 (2) of the Partnership Act. The fact that the original cause of action arose before that Act came into force does not

—S. 69 (3) (a)—Unregistered firm—Member, it can sue for dissolution and accounts. See 1939 Dig. Col 921. SHIBBA MAL v. GULAB RAI

I.L.R. (1940) All 26=185 I.O. 113=12 E.A. 299

—S. 74—'Commencement of this Act'—Interpretation. See PARTNERSHIP ACT, SS. 69 AND 74.

I.L.R. (1940) Nag 648=A.I.R. 1940 Nag 367.

—Ss 74 and 69—Scope and applicability of S. 74—Causes of action arising before Act came into force—Suit by unregistered firm after S. 69 came into force—If saved by S. 74

The wording of S. 74 of the Partnership Act seems to indicate that one of the purposes of the

should have been raised.

Quere.—Whether S. 69 of the Partnership Act contains a prohibition against a suit for the recovery of a debt due to an unregistered firm. See MUDALI v. SITU

A.I.R. 1

—S. 69 (1)

The language of the Partnership Act suits relating to a right vested in a firm. (Grille, J.) CHHOTEL I.L.R. (1940) Nag. 185 I.C. 624=12 R.N.

1939 N.L.J. 583=A.I.R. 1940 Nag

42 Bom.L.R. 186

PASSING OF. See TRADE MARKS

## PATENTS AND DESIGNS ACT (1911), S 53.

## PENAL CODE (1860), S 12

within the meaning of  
difference in shape, co  
although there was a  
construction. (*Almond*  
RAHIM BAKHSI.

## —S. 53—"Court"—Meaning of.

The words "the Court" in S. 53 must refer to the

affirmation made before  
merely verifying petition at end by a declaration—

pointed out (*Fazl Ali*  
RADHAKRISHNA DAS v.  
t 263=6 Out. L T 68=

1940 P W N 408

Applicability—Criminal  
led by affidavit or solemn  
Commissioner—Petitioner

maintain an  
s and Designs  
patents, if the

PATWARI—Duties of—Conversion of entry of  
sub-tenancy into a dawedar qabza entry—Priority.

It is entirely irregular on the part of the patwari to  
entry.

D. 211.

and the name of  
the register as  
BUNJARA v B.

—S. 64 (S  
controller—Ap  
him.

vn to a  
If he  
ould at  
V. and

Commissioner of oaths, there is no rule expressly  
requiring a petitioner to appear before the Commissioner  
for the purpose of verifying the petition or swearing an  
affidavit. A Criminal Revision Petition to the High  
Court, which is  
which the peti  
Commissioner to  
therein by his  
contains a signe  
end to the effect that the facts stated therein are true to  
the best of the knowledge and information of the petiti-  
oner and that his declaration is  
the ground that it does not

of the amount could not be recovered from the  
manager. In view of S. 15 (3) read with Ss. 3  
and 19 of the Act, the employer is not a proper  
party to the application, when there is a manager  
appointed by the employer. (*Dirais, J*)

FOR INSPECTOR OF FACTORIES.

(1940) Bom 96=187 I.C. 498=

12 R.B 453=41 Bom.L.R. 1283=

A I R. 1940 Bom. 87.

PENAL CODE (XLV OF 1860), S. 12—Deposit of  
pension papers as security for loan—Validity. *See* 1937  
Cal. 957. IGNATIUS ROHDIRICK, *In re*.

187 I C 689-12 R.C. 602-A I R. 1940 Cal 192

## PENAL CODE (1860), § 99

—S 99—Applicability—Condition—Act done

without juris  
S 99, Penal  
tion to do an  
respects ex  
expression  
section it can  
unjustified  
there is a cor  
J and Merad

—S 99—Scope—Arrest by police officer in good faith under colour of office—Use of force to rescue

The accused persons were ploughing the land of which they had been in possession for a long time. They were attacked by a number of men, one of whom was deceased. Three men on the s assaulted and one of their assail sword stick. One of the accuse the deceased with a *bala*.

Held that in the circumstances the accused were justified by the right of private defence (*Agarwala and Shearer, JJ*) SAKALDIP RAI v EMPEROR

7 B R 82=13 R P 236=190 I C 540=41 G

—S 100—Deceased chasing away trespasser—Accused killing them one after can claim right of private defence

The accused came to the enclosure of the t men who were father and son in order to murder of the latter. On being seen he ran away and was chased by the two deceased. The accused stabbed the father in the chest. Thereupon the son seized him and he was also stabbed.

Held, even supposing that right to arrest the accused for the accused had killed the fath

—S 100—Private defence—Right of—Accused going armed prepared for extenuality

Where the accused who went to the house of the deceased to commit an offence was armed with a dagger with the intention of using it if discovered he cannot claim the right of self defence if that which he anticipated actually occurred (*Young C J and Tek Chand, JJ*) MAHOMED KHAN v EMPEROR.

I L R (1010) Lah 564

—S 100—

having advantage  
See 1939 Dig C

EMPEROR I L

12 R L

—S 100(3)—Applicability

## PENAL CODE (1860), § 120 B

rate defence of property—Extent of

cutting another man's trees he would police station for help because by the all the trees would be gone. In normal conditions he would be well advised to protect his

—S 104—Trespasser—Resistance to owner—Plea of private defence if open See 1939 Dig Col 927

186 I C 469=

[R 1940 Nag 117

private defence of

—Meaning of See

42 P L R 591.

—Extent of one act—

Commission of different act—Liability—Conditions—Burden of proof

Where an act is abetted and the abetment takes the

conspiracy, the different act must be a probable consequence and also with the aid or in pursuance of the conspiracy. The burden of proving that the different act is a probable consequence of the abetment and

—Ss 115 and 117—Applicability and scope—'Express provision'—Meaning of—S 117—If an "express provision"—Abetment of commission of murder by the public—Hurt caused in consequence of attempt to

DIAL GOVERNMENT C

41 Cr L J 27

—Offence—Conspiracy to

cause murder by witchcraft—Offence

It is plain that an agreement to commit murder, being an agreement to commit an offence falls within S 120-B, I P. Code, and none the less so because the means by which the murder is to be perpetrated are not agreed upon, or the means which are agreed upon are not such as are not likely to prove and do not in fact prove effective. If once there is a conspiracy to commit murder, the case falls within S 120-B, I P. Code,

the death of or injury to some person, that does illegal act under between the accused witchcraft, the mere may anticipate that

## PENAL CODE (1860), S. 120-B.

Instance be a form of witchcraft the nature of which none of the accused understands when they enter into the conspiracy, it must be held that there is a conspiracy.

direct evidence, inferences from it must to a large extent form the conclusions. But there is one which must always be remembered based on circumstantial evidence: inference of guilt may be drawn on instances such as to be incapable of interpretation. (*Henderson v. PEROR v. RAHIMATULLA HAJU*)

—S. 120-B—Offence under—Requirements as to proof of.

The offence of conspiracy under S. 120-B, I. P. Code, is one which requires detailed and specific proof against

## PENAL CODE (1860), S. 124-A.

189 I.O. 807=13 E.P. 174=

Cr.L.J. 810=6 B.R. 874=21 Pat.L.T. 121=

1940 P.W.N. 145=A.I.R. 1910 Pat. 414

is 124 A and 155-A—Applicability—Attack on

Government, landlords and money lenders—Landlords and money lenders accused of oppressing tenants and Government accused of being behind landlords and

—S. 124-A—Offence under—Assertion that Government is setting community against community.

An assertion that the British Government has deliberately set community against community in this

the violent language and not in the best of taste, does not constitute the definition of exciting hatred or contempt established by law in British

OM PRAKASH v. EMPEROR,

42 F.L.R. 382

se under—Exhortation to people

EMPEROR.

18

—S. 124-A—Offence under—Requirements as to proof of.

S. 295, I. P. Code, speaks of insulting the religion of any class of persons. A complainant and the members of his family do not constitute a class within the meaning of S. 295. (*Dhale, J.*) AMIR HASSAN v. EM-

AND J. A. —S. 124-A—Sedition—Notes of speeches—Admissibility.

Notes of a speech are admissible in evidence for an offence under S. 124-A in respect



PENAL CODE (1860) S 124 A

PENAL CODE (1860), S 153 A

Where a speech was from start to finish a violent and dangerous incitement to the people to rise in rebellion

—Ss 141 and 323—Charge under S 141—Criminal offence under S 323—Legality—When could be justified

I P Code  
Code since  
by means of  
osecution of  
PERUMAL  
N N 873—  
L W 347

—S 124 A—Sedition cases—Duty of Court—  
Relevant factors

In sedition cases Courts have not to  
the mind of the people but are concern  
struction of the speeches in question  
have to be taken as a whole and no  
(Thomas, C  
EMPEROR

claimed it as part of the communal land whereas the  
The complainant  
up walls to a  
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r Ss 148 149

L J 575  
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—Ss 141 and

—Meaning of—Right

Per Young C J—  
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Code, where he is in  
upon which an attac

at stand in the

A 14 1200 Mad 121—(1939) 12 L J 111

bject—Preventing by force

—Offence See 1939 Dig,

141 ROWTHER, 141

M 671—41 Or L J 337—

AIR 1940 Mad 43

e liability—Intention If

931 SOHNA v EMPEROR

1940 L J 603—12 R L 470—41 Or L J 348—

1940 Lah 53

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R KHAN v EM

42 P L R 477

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## PENAL CODE (1860) S 153-A

of His Majesty's subjects" See PENAL CODE, Ss 124 A AND 153 A 42 Bom.L.R. 861

—S 153 A—Applicability—Stray circulation of notice likely to promote class enmity See CR P CODE, S 109 AND PENAL CODE S 153-A 1940 O.A. 838

—S 153-A—Classes—Meaning—Capitalists of a class

The word classes in S 153 A Penal Code has not been defined anywhere. Any definite and ascertainable class of His Majesty's subjects will come within the section though the classes may not be divided on any racial or religious grounds. Capitalists class is rather a vague phrase to denote a class and a certain class, so as to come under S (Thomas C J) VISHAMBHAR DAYAL TRIP

EMPEROR 190 I.C. 887=1910 A.C. (

1910 O.L.R. 648 1910 O.A.

1910 A.W.R. (C.C.) 440=1910 O.W.

—S 153 A—Speeches constituting offence—How Courts should construe—Accused's intention—Relevance

In estimating the effect of speeches in respect of which a speaker is charged under S 153 A, Penal Code Courts should look at the speeches as a whole and not pay undue regard to any particular sentence or

## PENAL CODE (1860), S 186

—Third person discharged—Offence See 1939 D.G. Col. 932 JHAMATMAL ALUMAL & EMPEROR.

—Ss 182 and 193—Applicability—Petition and sworn statement filed in Court containing false and defamatory allegations—Offence See CR P CODE, S 195 (1) (a) AND (b) 1940 M.W.N. 867= (1940) 2 M.L.J. 491

—S 182—Offence under—Withholding of information

S 182 makes punishable the positive act of giving false information and there is nothing in the section

## complaint

Where a complaint is proved to be false, a case would lie against the complainant under S 211 I.P. Code and not under S 182, I.P. Code (Darius) ABDUL GANI & EMPEROR 1910 A.M.L.J. 42.

—S 182—Scope and applicability

S 182 makes no distinction between information

general offence of defamation or is carved out of (Gruer)

product committed in the view or presence of the Court See

An Assistant Panch who was the local collecting member the Chowkidari office arrears of attachment of cattle but when he had given a short distance petitioners and others came up and rescued them—one of them who was armed

to police during investigation—Offence See 1939 D.G. Col. 932 JHAMATMAL ALUMAL & EMPEROR

—Ss 182 and 211—Applicability—Information to Police leading to arrest of third person on murder charge

illiterate and did not know of the defects in the Affidavit (1) that the Assistant Panch was a servant within the meaning of S 211 I.P. Code was acting in the discharge of his public duty in giving the warrant for realising arrears of

## PENAL CODE (1860), S 186.

act that the signature of the *As essor panch* was put not in its proper place, but down below, was only a formal defect which was covered by S 34 of the Chowkidari Act, (3) that the omission to put the date on the warrant was also a formal defect, though a serious one, (4) that the omission of the name of the person authorised to execute the warrant was not a formal defect but made the warrant one without any legal force, (5) that resistance

## PENAL CODE (1860), S 206

evidence or fabricating false evidence in respect of such proceedings (*Khundkar and Edgley JJ*) *HARI CHARAN v KAUSHIKI CHARAN*

I L R (1940) 2 Cal 14=188 I O 686=  
41 Cr L J 662=13 R C 44=44 O W N 530=

A I R 1940 Cal 286

—S 193—*Offence under—Inadmissible document*

It is now well settled that the mere fact that a document is inadmissible in evidence of the mischief of the document on to use the document creates the criminal inference from the (*Khundkar and A DHUPI v EM* 1940) 1 Cal 465= I R 1940 Cal 419 —*Propriety—Giving sworn and sworn to*

—S 186—*Burden of proof*

When the prosecution has proved that the accused is convicted for the discharge of his public servant upon him by I JAMNADAS v EMPEROR

187 I C 127=

41 Cr L J 401 (2)=12 R S 223=

A I R 1940 Sind 42

—S 188—*Knowledge—Proof of—Disobedience of order under S 144 Cr P Code—Charge of—Knowledge of order—Proof of—Necessity—I knowledge from circumstances*

Before a person can be convicted under Code on a charge of having disobeyed an S 144, Cr P Code there must be positive

to prove the question inference KISHORE

AND BADRI LAL In the matter of 187 I C 15 12 R P 578=41 Cr L J 414=19 I W 21 21 Pat L T 231=6 B R 425=A I R 1940 Pat 446

—*If must be given to police or be volunteered.*

To sustain a charge under S 201 I P Code of giving false information knowing it to be false with intent to screen the offender from legal punishment the information

given in reply to inquiries (*Lakshmina Rao J.*)

180 I C 573=

=1940 M W N 803=

49=41 Cr L J 950=

(1940) 2 M L J 315

ling under Succession

the Succession Act is not a part of S 205 of the Penal Code BHARI LAL v EMPEROR

R 693=A I R 1940 Lah. 514

ability — Judgment debtor—Un

dertaking in Court not to alienate specific property—

offence Under S 193, I P C

—S 193—*Judicial*



## PENAL CODE (1860), S 224

papers the next morning. There was no order for arrest. The constables then take G to the thana by force. G reser resisted this, and a scuffle followed in the which brickbats were thrown. G was prosecuted under S 224, I P Code and four others were prosecuted under Ss 225 and 353 I P Code and convicted.

*Held*, (1) that the Sub Inspector ordering the constables to bring G to the thana was not a direction for his arrest under S 56, Cr P Code (2) that the constables also had not pretended on their account to arrest G under their powers under S 54 Cr P Code, (3) that neither G nor the other accused committed any offence and (4) that therefore the convictions under Ss 224, 225 and 353 I P Code, were entirely unwarranted. (*Dhavlal, J.*)

GULABI MAHTO v. EMPEROR 189 IC 539—  
13 RP 125—41 Cr LJ 742—6 BB 835—  
1940 PWN 149—21 Pat LT 144

or under any local or special law applicable to British India. The mere fact that a State adopts the Codes of British India as its own does not justify the conclusion

## PENAL CODE (1860), S 232

21 Pat LT 940  
—S 266—Applicability—Offence under—Essentials of—Fraud—False measure—Meaning of—Intention—Bombay Weights and Measures Act—Offence under—If renders measure false. See 1939 Dig, Col 935 KANAYALAL MORANLAL v. EMPEROR

185 IC 228—12 RB 241—41 Cr LJ 172.  
—S 268—Applicability—Embankment on one side of river by riparian owner to protect land from flood—Injury caused to lands on the other side—Offence—If public nuisance—Nature of rights of parties

Where a riparian owner of land on one side of a tidal river throws up an embankment on his own land to protect his fields from flood and this results in accumulation of water on the fields of the owners of land on the other side of the river, the rights of the parties are

and the Courts should  
An embankment of  
cause injury to some  
held to be a public  
S 268, I P Code  
ANTY v. EMPEROR

181 IC 82—21 Pat LT 614—1930 PWN 524—  
6 Cut LT 43—AIR 1940 Pat 677  
—S 279—Rash and negligent act—Pillion riding

186 IC 795—12 RL 432—41 Cr LJ 378—  
AIR 1940 Lah 44

—S 225—Applicability—Person arrested by chaukidar without warrant on mere oral direction by Sub-Inspector of police—Rescue of such arrested person—Offence. See CR P CODE, S 54

1940 PWN 687  
—S 225—'Lawful Apprehension'—Person asked to go to thana at request of Sub Inspector—Refusal—Attempt to take him by force—Scuffle and throwing of brickbats—Conviction—Legality. See Cr P CODE Ss 224, 225 AND 353 1940 PWN 149

—S 225 B—Charge of rescuing oneself from lawful custody

A person cannot be charged under S 225 B, I P Code, for rescuing himself from lawful custody (*Varma*,

1940 Rang Lk 121—180 IC 800—13 RB 21—  
41 Cr LJ 693—AIR 1940 Rang 176

—S 283—Applicability—Cart track in patta land of accused—Conviction for closing it—Sustainability. See 1939 Dig Col 935 MUTHU GOUNDAN v. EMPEROR

186 IC 896—12 RM 701—  
41 Cr LJ 391—1939 MWN 1259—  
AIR 1940 Mad 216

—S 289—Tethering horse in narrow street—Offence.

The tethering of a horse in a narrow street where people cannot pass without going near the animal's hind legs is a negligent omission to take precaution with the animal sufficient to satisfy the requirements of S 289

(*Davis, J C and Weston J.*) GAGUMAL MULCHAND v. EMPEROR

190 IC 61—13 RB 55—41 Cr LJ 818—  
AIR 1940 Sind 172

292—Test of obscenity—Picture of woman in—If obscene

A picture of a woman in the nude is not per se obscene. Unless the picture is an incentive to sensuality and excites impure thoughts in the minds of ordinary persons of normal temperament who may happen to look at it, it cannot be regarded as obscene within the meaning of S 293, I P Code. For the purpose of deciding whether a picture is obscene or not, one has to

—S 243—Ingredients of offence—Knowledge or time of knowledge—Burden of proof—Duty of prosecution—Onus if shifts on to accused—Evidence At, Ss 105 and 106—Effect of

To establish an offence under S 243 I P Code it must be shown that the accused knew at the time when he became possessed of the coins (alleged to be

**PENAL CODE (1860), S. 295**

~~S. 295—Offence under—Brahmins breaking sacred thread of Ahirs.~~

The preponderance of opinion is strongly in favour of the view that the *Ahirs* are Sudras and do not belong to the twice born classes. If *Ahirs* are Sudras and

insulting the religion of the complainant different castes the parties are all same religion. It is conceivable that

worship in a temple were sufficient to constitute an

208=

**PENAL CODE (1860), S. 300.**

case of murder. The first class of culpable homicide is causing death by doing an act with the intention of causing death, such an offence is also *prima facie* murder within the express words of S. 300. The second class of culpable homicide is causing death with the

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~~S. 300, Exceptions—Burden of proof.~~

The onus is strongly on the accused who admits

~~Ss 299 and 300—Relative scope and applicability.~~

S. 299, I. P. Code, defines the offence of culpable homicide and S. 300 defines the circumstances in which the offence of culpable homicide will, in the absence of certain exceptions, amount to murder. In other words it defines what must be proved to establish a *prima facie*

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## PENAL CODE (1860) S 300

each provocation as was contemplated in Excep 1 to S 300, I P Code, and the offence was therefore only one of culpable homicide not amounting to murder (*Gentle and Patanjali Sastri, JJ*) **EMPEROR v ANDI THEVAN** 1940 M.W.N. 811

—S 300, Excep 1—*Applicability—Loss of self control—Necessity for*

In order to bring a case within Excep 1 of S 300, I P Code, it is not sufficient that there should merely be grave and sudden provocation but it should also be shown that the accused was deprived of the power of self-control by this provocation (*Blacker J*) **SHAN GARA SINGH v EMPEROR** 42 P.L.E. 88

—S 300 Excep 1—*Grave and sudden provocation—Accused stabbing deceased when deceased closing in with accused and trying knife and throwing him against wall—Accused being twice—Death caused—Offence*

The accused who had already stabbed two men, applied his hand and foot to the deceased when he was closing in with him.

The accused was standing with his brother in law and died.

*Held*, that any violence which was done in wrestling with the accused and wall would not amount to grave and sudden provocation within the meaning of Excep 1 to S 300, I P Code. The offence must be held to be clearly one of murder (*Gentle and Patanjali Sastri, JJ*) **EMPEROR v ANDI THEVAN** 1940 M.W.N. 811

—S 300, Excep 1—*Grave and sudden provocation—If hat amounts to*

The accused was staying with his brother in law and

was carrying with him a dagger which he used to kill the deceased.

*Held*, that the accused was guilty of murder. The offence must be held to be clearly one of murder (*Gentle and Patanjali Sastri, JJ*) **EMPEROR v ANDI THEVAN** 1940 M.W.N. 811

—S 300 Excep 2—*Scope—Killing in excess of private defence Effect See PENAL CODE SS 97, 99 AND 300, EXCEP 2* 1940 Bang.L.E. 109

—S 300, Excep 4—*Application of S 34 See 1939 Dig., Col 939 ASMAT SHEIKH v EMPEROR 186 I.C. 847—12 B.C. 531—41 Cr.L.J. 383—A.I.R. 1940 Cal. 147*

—S 300 Excep 4—*Man attacking unarmed person with dagger—If taken undue advantage*

When a man attacks an unarmed person with a dagger, he takes undue advantage and acts in a cruel manner. (*Mir Ahmad, J.C. and Soof, J*) **UMAR KHUSHAI v EMPEROR** 128 I.C. 313—12 B. Pesh. 46—41 Cr.L.J. 574—A.I.R. 1940 Pesh. 1

—S 300 III. (c)—*Chopping of leg or arm of another with sword or arrow—Offence*

A person who uses a sword or arrow, chopping at an arm or leg of another, and by so doing severs the arteries

## PENAL CODE (1860) S 302.

of the arm or the leg must know that he is inflicting an injury which in the ordinary course of nature is sufficient to cause death. The offence is clearly one of murder as seen from III (c) to S 300 I P Code (*Ram and Lakshmana Rao, JJ*) **PUBLIC PROSECUTOR v RAMASWAMI NADAR** 190 I.C. 360—13 E.M. 401—1940 M.W.N. 479—52 L.W. 224—41 Cr.L.J. 900—A.L.E. 1940 Mad. 745—(1940) 2 M.L.J. 92

—S 302—*Accused running with knife after having stabbed from ferien—Attempt by deceased to take knife or to stop a cut—Accused stabbing deceased in vital part and causing death—Offence*

The accused having already struck or stabbed four persons, was running with a knife in his hand and the

deceased was running after him. The accused stabbed the deceased in the vital part and caused his death.

under these circumstances was that of murder and the conviction under S 302 I P Code (*Ram and Lakshmana Rao, JJ*) **EMPEROR** 1940 M.W.N. 811.

—*Applicability—Accused member companions firing and killing*

Three persons resorted to an assault on the accused. The accused was guilty of murder. The offence must be held to be clearly one of murder (*Gentle and Patanjali Sastri, JJ*) **EMPEROR** 1940 M.W.N. 811

although he fired but his two companions fired and killed the deceased.

*Held*, that S 34 applied and the accused was guilty of murder. But sentence of death should be reduced to one of transportation for life (*Young C.J. and Seng, J*) **SHERKHAN v EMPEROR** A.I.E. 1940 Lah. 485

—S 302—*Applicability—Assault with lathi on head and neck—Intention to cause death—Body of over and decapitated—Offence—Penal* **NEHAL MAHTO** 256—6 B.E. 316—276—12 R.P. 505

—S 302—*Provocation—Plea as to—Purpose for which it can be relied upon*

Although the provocation may not be sufficiently grave or sudden to take the offence outside the provisions of S 302, I P Code, nevertheless, the provocation whatever it is, can be urged for the passing of the lesser sentence (*Grille and Gruer, JJ*) **BHAROSA RAM DAYAL v EMPEROR** I.L.E. (1940) Nag. 678—1940 N.L.J. 623

—S 302—*Proof of offence—Dying declarations*

The only evidence in the murder case was the oral dying declaration made to the brother of the deceased and two written dying declarations made to the Sub-Inspector on the very day of the occurrence and to the Magistrate on the day following the occurrence. In all the dying declarations the deceased charged the accused as the actual person who fired at her. Accused's son armed with a gun was with him. In corroboration of the dying declarations a freshly fired gun was found in

the possession of the accused.

The offence must be held to be clearly one of murder (*Gentle and Patanjali Sastri, JJ*) **EMPEROR** 1940 M.W.N. 811

## PENAL CODE (1860), S. 302.

the possession of the accused it had been freshly broken and smelt of fresh discharge:

*Held*, that the accused was guilty under S. 302 (*Mir*

## PENAL CODE (1860), S. 302.

the sentence of death passed on his co accused was commuted by the Executive Government is no judicial consideration for not passing death sentence on the accused

It is true that the onus of proving the guilt of an

culpable homicide not amounting to murder. The

ted murder under which great weight the question of was not such as murder to one of

derer succeeds in making himself scarce for a number of years, he may hope to escape the extreme penalty of law in a case in which the extreme penalty is clearly called

## —S. 302—Sentence—Mitigation of.

When the crime has been committed by the accused and wanted to end his same time, the lesser since, (*Lakshmana Rao* *UDUMBAN, In re*,

N. 358—51 L.W. 37—  
A.I.R. 1940 Mad. 562.

## ground for lesser sentence

The fact that a young woman who has been convicted of murder has an extremely young baby born to her since the murder is no ground for passing the lesser sentence,

## —S. 302—Sentence—Mitigation—Severe injuries found on accused—If ground for mitigation of sentence.

## commuted by Executive Government.

Where an accused is guilty of a cold blooded and brutal murder carried out with considerable amount of determination, the only appropriate sentence for an offence of this character is one of death. The fact that

## Court in session.

It matters not how an accused's guilt is established, whether by the testimony of eye-witnesses testimony of combined circumstances, established beyond all reasonable doubt



## PENAL CODE (1860), S. 302

of proof must be the same in each case. The fact that the guilt of a person charged with murder is proved only by circumstantial evidence though strong, is no ground for imposing the lesser sentence of life. In such a case where the lower fails in its duty to impose the only p

## —S 302—Sentence—Rule if any, governing—Age of accused—Relevancy

On the question of sentence it is not possible to lay down any hard and fast rule of universal application. Each case must be decided on its own merits and punishment should be awarded suitable to each case. S 302 I P Code, provides two punishments. In the absence of any extenuating circumstances the sentence of death is

*Accused finding wife with paramour and killing her—Offence—Accused thinking over for hours and then killing—Provocation—If sudden*

It is clear that if a person sees his wife in the arms of another, and in the anger of the moment kills either his wife or her paramour he is not guilty of murder. The provocation being grave and sudden, would reduce the offence to one of culpable homicide not amounting to murder. But a man may think over what he has seen for some hours and may still act under grave provocation, though it cannot be described as sudden. (*Harris, C J and Parnis, J*) EMPEROR v JATE URAON 187 IO 586-12 HP 611-41 Cr LJ 472-1940 PWN 446-6 BE 503-AIR 1940 Pat. 541

—S 301(1)—Offence under—Evidence. See 1939 Dig. Col 943 ABDUL KHANAN v EMPEROR 2-8 42 PLR 42

—Ss 301, Part 1 and 300, Except 1—Causing death under grave and sudden provocation—Sentence—Considerations—Many injuries on deceased. See 1939 Dig. Col 942 HUSAIN v EMPEROR 41 Cr LJ 15

—S 307—Applicability—Essentials of offence—Test to decide—Number of blows on neck of person unable to defend himself—Offence

For an act to amount to an attempt to murder all that is necessary to prove is that if the act had caused death it would have amounted to murder provided that it was

## PENAL CODE (1860), S 323

done with such intention or knowledge as would be necessary to be proved in the case of murder. The fact that the act results only in minor injuries or that no

neck of a person not in a post a person from behind) if the

attack is successful the act must be held to amount to murder when death does not result from such attack it would clearly be an attempt to murder within the meaning of S 307, I P Code (*Agarwala and Shearer JJ*) BHARAT DUBE v EMPEROR 1940 PWN 740

—Ss 307 and 325—Applicability of S 307—Requisites—Assailants armed with lathis—Accused alone seen striking with lathis—Absence of intention to cause

—Ss 307 and 326—Applicability—Single stab causing injury not likely to cause death in the ordinary course of nature—Offence. See 1939 Dig. Col 943 GURUSAMI THEVAN, In re 51 LW 743- (1930) 1 MLJ 747

—S 307—Sentence—Mitigation—Grounds—Accused under great mental strain—If grounds for light sentence

Where the crime appears to have been committed at a time when the accused was labouring under great mental strain as a result of punishment inflicted on him and when the accused has already been in detention for a year, no heavy punishment is called for. A sentence of one year's rigorous imprisonment was held sufficient to meet the justice of the case. (*Agarwala and Shearer, JJ*) BHARAT DUBE v EMPEROR 1940 PWN 740

—Ss 323 and 325—Applicability—Injuries caused on head by beating by two persons—One is grievous injury—Absence of evidence to show who caused grievous injury—Offence—Con action under S 325—Suitability

Where injuries are caused on the head one grievous and the other simple as a result of beating by two persons, but it is not possible on the evidence to say which of the two assailants caused the grievous injury, neither

## PENAL CODE (1860), S 323

of them can be convicted for causing grievous hurt under S 325, I P Code. Both of them can be convicted only under S 323.

## PENAL CODE (1860), S 364

kept at a particular place under a sort of surveillance, their detention amounts to wrongful confinement. Their stay was against their will and in fear of the police, hence there was a wrongful restraint. The police can not detain suspected persons indefinitely during the

ul-Hussan J) PARMESHWAR v EMPEROR

189 I.C. 618-13 B.O.

1910 O.L.R. 49

1910 A.W.R. (C.C.) 307 (S)

1910 O.A. 592 = 111

—S 325—Offence under—

To constitute an offence under S 325, it is not only necessary to find that the grievous hurt caused but that the person causing it either intended to cause or knew that he was likely to cause it (*Bariley and Lodge JJ*) MANG.

—S 325—Sentence—  
convicts by jail officer

When an officer in contempt and tortures them the law should be inflicted. It resulted in the death of a convict sentenced to seven years most severe sentence possible. CHAVAN LAL v

41 Cr.

—If S 325

to extract clues to guide their course of investigation. A policeman who stands by, acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting confession or information leading to the detection of the crime is also guilty of an offence under S 330. The maximum application in such a case is 10 years. EMPEROR

189 I.C. 591 = 4

1910 N.L.J.

—S 330—Assault on—  
standing by—Offence

Where a policeman stands by at the time when another policeman is committing an assault on another with a view to extort a confession he is guilty of the offence under S 330.

—S 318—Investigation of crime—Detention of suspect—If amounts to wrongful confinement

Where certain persons suspected of having committed a crime are summoned for investigation and are examined but are not arrested thereafter and continue to be

scuffle and throwing of brickbats—If use of criminal

Interpretation—Entrustment—If may be presumed  
The expression 'lawfully entrusted' in the explanation

minor. The word used in the explanation and that must be distinguished from the word 'child'.

—Applicability—Girl going to institution  
s consent—Mother afterwards changing  
mind—Detention of girl—Offence. See 1939 Dig., Col 945 OM RADHE v EMPEROR.

11 B. (1910) Kar 115

—S 363—Offence under—Proof required  
S 363 I P Code is a penal statute and not a mere

prosecution to prove that the accused either took or enticed a minor from her home. The mere fact that she left her home and was found a day and a half later in the company of the accused in circumstances that tend very gravely against the accused is sufficient to show that he must either have enticed her (*Blacker, J*) BALDEO

42 P.L.R. 25

—Ss 361 and 302—Abducted person murdered by abductor—Proper charge

When the case for the prosecution is that the abducted has been murdered by the abductor, the abductor should be charged with murder.

PENAL CODE (1860) S 364

—S 364—Offence under—Intention at time of abduction—Need for proof  
To establish an offence punishable under S 364, I

—Ss 366 and 370  
proof as to age of girl  
946 EMPEROR v QUDRA  
185 LO 271=  
—Ss 366 376 and

—S 366 A—Offence—Essentials—Proof of girl being below eighteen—Necessity—Charge to jury—Duty of judge to emphasize question of age of girl See 1939 Dig Col 946 SACHINDER RAIZ EMPEROR  
41 Cr L J 1  
—B 376—Evidence—Statement of girl shortly after incident—If corroborative evidence—Evidence Act, Ss 8 and 157

Act claim of right then he cannot be held guilty of the

PENAL CODE (1860), S 383.

trees—Mortgagee wrongly cutting trees—Offence—Conviction—Sustainability  
A mortgagee in possession of land with trees who is not given the right to cut and appropriate the trees can not be convicted of theft under S 379 if he wrongly cuts the trees though he is

Offence—Dishonest intention—Court sale of crop by judgment debtor's tenant—alone—Removal of crop by judgment

execution of a decree the purchaser through on the land after the order delivery of the the land Petitioner on the ground after the land

ld not be said was not sus- KATASUBBA W 346 (2)= M W N 871

—S 379—Offence—Removal of crops under claim of right—Land subject of civil suit—Charge of theft—Sustainability See CR. P CODE S 436 1940 M W N 871

—S 379—Offence under—Removal of standing crops attached under S 145 (4), Cr P C  
If one of the parties to a proceeding under S 145, Cr P C, removes the standing crops at the instance of the Magistrate under the second

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act even though his motive for doing such act is relevant for the illy Petitioner on the ground a liquor shop threatened to ask him liquor in his shop—ly entitled to obtain ion that the petitioner persons to abstain was induced by this ney to make the peti

## PENAL CODE (1860), S. 383

*Held*, that the petitioner of extortion and could not  
J.) BARTAM JAGGA RAO

1940 P

—S 383—Essentials

of thumb impression of person on blank paper—Offence.

To sustain a conviction under S. 383, I. P. Code, the prosecution must prove that the victim was put in fear of injury to himself that he was dispossessed of valuable security converted into a

victims to deliver  
(Dante, J.)

—Ss 403 to 409—Applicability — Partnership cases

It cannot be laid down in any circumstances can under Ss 403 to 409, I (Bartley and Lodge, J) HOUSAIN

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A I R 1940 Cal 371

—S 403—Essentials of offence—Retention by clerk of moneys received—Entry in accounts some days later—Conviction—Sustainability

A clerk of the Official Receiver received certain sums on various dates but entered them in the accounts on each occasion some days later. It was found that he

## PENAL CODE (1860), S. 411.

under the criminal law. (Abdul Ghani, J.) GURU MALLIAH v GOVERNMENT OF MYSORE

18 Mys LJ 424.

debenture deposited with employer pledged it with Bank offence.

sited a municipal debenture

*resid*, that the pledge of the security with the Bank was not a breach of any legal contract, express or implied within the terms of S. 405 I. P. Code, and that

It is erroneous to hold that a partner cannot be convicted of criminal breach of trust under any circumstances (Lakshmana Rao, J) SATYANARAYANAMURTHY v. MANIKYALA RAO

187 I C 126

12 B M 687=41 Cr LJ 398=1939 M W.N. 1252=A I R 1940 Mad 265.

—S 409—Burden of proof—Absence of direct

Dig, Col 948 REX v. KRISHNAN

190 I C 123=13 B M 386=41 Cr LJ 824=A I R 1940 Mad 329

—S. 405—Ingredients of offence—Person receiving money and failing to account for it—If guilty of offence—Intention See 1939 Dig, Col 950 REX v. KRISHNAN

190 I C 123=13 B M 386=41 Cr LJ 824=A I R 1940 Mad 329

—S 406—Applicability—Surety entrusted with property—Failure to produce same in Court in terms of undertaking—Criminal breach of trust—Liability to conviction—Civil liability under bond—If bar to criminal prosecution

A person who executes a bond to the criminal Court in respect of property entrusted to him pending an inquiry

dence or by circumstantial evidence. The absence of direct evidence does not make a conviction unsustainable (Venkataranga Iyengar, J) VENKATA RAO, In re.

17 Mys LJ 496

—S 409—Sentence—Criminal breach of trust by public official—Deterrent sentence—Substantive term of rigorous imprisonment—Necessity for

An offence under S. 409, I. P. Code, is a very serious one and whenever such an offence is committed by a responsible official in public office, the erring official should be adequately punished and in such a case the sentence passed on him should be deterrent. In addition to the fine imposed, there should be a substantive term of imprisonment, which must be rigorous and no simple. (Venkataranga Iyengar, J.) VENKATA RAO, In re.

17 Mys LJ 496.

—Ss. 409 and 477-A—Three offences under each—Joinder of charges—Legality See CR. P. CODE, S. 221

commission of offence A stating it to be

beft and while he sold a part of that it was and conviction proper course

## PENAL CODE (1860) S 411

for the Magistrate in such circumstances is to separate the cases and convict A under S 414, Penal Code, and to call him as a witness in B's case in order that his exoneration of B might be acted upon if found.

/) KHAIR DIN v EMP

—S 411—Applicability—Accused found both before and after theft with person convicted for receiving stolen property—Liability to conviction. See 1939 Dig Col 951 DORAI SWAMI NAIDU, *In re*

—S 414—'Assists in making away with property'—Meaning of

The accused, a taxi driver was driving his car along a road with some passengers who hired the taxi. For reasons not known the taxi suddenly stopped on the way. Two of the passengers got down and attacked a person whom they had seen rob another person.

person robbed

I L R (1940) 2 Cal 9

—Ss 415, 420 and 120 B—Applicability—Tea

187 I C 33=12 E M 690=41 Cr L J 388=  
A I R 1940 Mad 155

190 I C 253=15 E O 143=1940 O A L 610  
1910 A W R (C C) 381=1940 A Cr O 119=  
1940 O L R 561=41 Cr L J 881=1940 O A 759

—S 420—Charge under—Misrepresentation—

—Ss 420 and 477—Debtor inducing creditor to produce bahr for settlement—Offence committed—  
PERSHAD v DHANU

—S 420—Offence for money already bank.

The giving of a cheque in repayment of money already received with the knowledge that the drawer has no funds in the bank does not amount to an offence of cheating (Ram Lal, J.)  
KATRA v GANESH DASS 187 I C 123=  
12 R L 445=41 P L R 869=  
41 Cr L J 394=A I R 1940 Lah. 93

## PENAL CODE (1860), S. 447

—S 420—Offence under—Sale of liquor bottles with false labels—No intention to cause wrongful loss

Where a person has sold liquor bottles with false labels, claiming them to be genuine he is guilty of S 420 even if he had no intention to loss to the person cheated. Whether or is likely to be a resale at a profit by the person who wholly irrelevant to the question of cheating. The cheating is complete as soon as the sale to the purchaser on false representation is complete and the price paid (Bartley and Nanning Rau, J.)  
GUBBAY v EMPEROR 188 I C 267=12 E O 655=  
41 Cr L J 556=A I R 1940 Cal 205

—S 424—Construct on—Open seizure in exercise of a right—Section, if applies. See 1939 Dig, Col 952  
NAND KISHORE v EMPEROR 185 I C 151=  
12 R A 304=41 Cr L J 111

—S 427—Pulling down wallspat up by complainant on land—Accused claiming land as communal land of villagers—Offence. See PENAL CODE Ss 148, 149  
AND 427 1939 M W N 1254

—S 430—Sluice—Offence  
*In re*

—S 430—Applicability—"Mischief"—Sluice opened by Amin of estate for irrigating land not entitled to water from tank—Closure by accused with object of protecting own land from suffering from want of water—Offence

plying water to the lands registered as wet under the tank but with the intention of supplying water to land to be irrigated from the tank in that the opening of the sluice was its closure by the accused with the their own land from suffering from it be said to be with the intention of loss or wrongful gain and therefore the sluice cannot be termed as mischief as defined in the Penal Code. The dispute between

—S 430—Applicability—Putting up dam across water supply channel and depriving complainant of water supply for agricultural purposes—Offence. See 1939 Dig, Col 953 NARASIMHA PAO v AYYANNA RAO 41 Cr L J 88

—Ss 443 and 457—Concealment of presence—Necessity

In order to constitute lurking house trespass the must take some active means to conceal his presence. In the absence of any evidence to indicate accused took any steps to conceal the fact of his presence he cannot be convicted under S 457, I P (Holister and Braund, J.) CHHADAMI v

I L R (1940) All 175=  
188 I C 542=13 R A 44=1940 A Cr C 17=  
41 Cr L J 623=1940 A L J 77=  
1940 A W R (H C) 78=A I R 1940 All 259  
—S 447—Resistance subsequent to unlawful possession—Conviction in respect of—Legality. See 1939 Dig, Col 954 ANANTRAM v EMPEROR 186 I C 469=12 R N 227=41 Cr L J 315=  
A I R 1940 Nag 117.

**PENAL CODE (1860), S. 451.**

—Ss 451 and 457—Applicability—Accused of entry into house at night—Commit theft—Absence of evidence—Conceal presence—Offence See *MOSABEB DOMF v EMPEROR* 1910 M W N 873

—S 453—Applicability—Village temple—Members of one faction breaking into temple and removing idol by force for festival—Offence See *PENAL CODE SS 147, 330 AND 453* 1910 M W N 873

—S 457—Offence—Intention—Presumption—Burdens of proof—Duty of prosecution See 1939 Dig, Col. 954 *MOSABEB DOMF v EMPEROR*.

**A I R. 1910 Pat. 14**  
—S 460—Scope—Death caused while committing lurking house trespass or house breaking—Offence committed

S. 460, I P Code, does not provide for an offence but merely lays down a principle of constructive liability. If a person causes the death of another at the time of committing lurking house trespass or house breaking by night, it does not matter if he escapes being tried under S. 302 or 304, I P Code, in the case may be, and that he can only be tried under S. 460, I P Code. *See* *EMPEROR v EMPEROR*

—Ss 465 and 471—Filing of forged document—Pleader's responsibility—His duty.

A pleader is just like any other agent and to justify his prosecution under Ss 465 and 471, I P Code, it

189 I O 678=13 B N 67=41 Cr L J 763=  
1940 N L J 183=A I R 1940 Nag. 360

—Ss 467 and 471—Fabrication of false document—When criminal—Question of intention.

The fabrication of a false document is criminal only when certain intentions can be attributed to the person who fabricates it. The question of intention is one of fact. A person must be held to intend the natural consequences of his action. So when a person obtains a forged document and protects himself from punishment by

1940 A W R (H O) 559=

—S 467—Scope—Document—Attestor—Liability of—Plea of intent—If open See 1939 Dig, Col. 954, *REDDY, In re*.

—S 471—Construction—"Fraudulently or dishonestly"—Possibility of injury resulting—Necessity—Fraud upon Court though in support of legal claim—

**PENAL CODE (1860), S. 486.**

th a certified judgment 4-7-1935 to was similarly It was found

that the decree had been amended on 30-8-1935, but the copy filed by the accused sought execution of a decree passed on 24-7-1935. The accused contended that since the amendment of the decree in August 1935, would make the execution application in time, he had not committed any offence in altering the dates, as there was no possibility of any one being injured by the forgery.

Held, that a fraud was attempted upon the Court and it was immaterial that the alterations were brought about under an erroneous impression that the decree was time barred and that it was not necessary for a prosecution in such a case to go further and establish an

trial should be proved without any reasonable doubt. An accused who is charged under Ss 471 and 193, I P Code, is entitled to an acquittal, if the document is not proved to be a forged document. (*McNair and Khundkar, MITTER v EMPEROR* 72 O L J 46)

station of trade mark—Resemblance necessary

In order to prove that one trade mark is an imitation of the other, it is not necessary that there should be a resemblance in every case. It is sufficient if the resemblances are of such a nature as to be calculated to mislead an unwary purchaser. Hence, where the get up and general appearance of the labels of the accused put on the birds are so similar to those of the complainant that the class of persons to whom birds are sold would

—S 486—Offence under—Mark, if should be exclusive property of anybody

For the purposes of S. 486, it is not necessary that

## POLICE ACT (1861), S 32

a condition that music of all description should be stopped within a specified distance on either side of any mosque not only the licensee but all persons who being aware of the prohibition in the licence violate it would be guilty of an offence under S 32 of the Act. The persons violating the condition need not be the licensee (*Lakshminarayana Rao v*) ARUNACHALA MEDALI *1939*

1940 M W N 1119 = 52 L W 620 =

(1940) 2 M L J 819

—S 32—Violating the conditions of any licence—Meaning of

The expression "violating the conditions" which has been used in S 32 of the Police Act connotes the idea of first violation on the part of the person whom it is sought to prosecute for example by violating the condition himself or by expressly permitting such violation by others or passive violation by not taking due care to see that the conditions of the licence are fulfilled. Where therefore one of the conditions of a licence to form a procession is to the effect that no weapons are to be carried by any persons in the procession the licensee is liable to prosecution for violation of that condition only if he carries a weapon himself or expressly permits weapons to be carried by others or fails to take due care to see that that condition of the licence is fulfilled (*Edgley v*) SIBENDRA BEKHAR v EMPEROR

1 L R (1940) 2 Cal 122 = 41 C W N 706

POSSESSION—Suit for—Proof required of plaintiff See 1939 Dig Col 958 KARTAR SINGH v DAYAL DAS.

I L R (1939) Kar (P C) 350 =

42 Bom L R 1 (P C)

POWER—Construction—Authority given by Board of Directors of company to Director to attend to all the affairs and Court proceedings relating to the company—Authority to file insolvency petition against debtor

A resolution passed by the Board of Directors of a Bank authorised one of the Directors to attend to all the affairs and Court proceedings relating to the Bank. The said Director filed on behalf of the Bank an application to adjudicate a debtor as an insolvent. It was contended that the petition was unauthorized.

Held that a petition in insolvency involved proceedings in Court and the director had therefore full authority to file the petition (*Leach v*) and *Hortwell v*) EBRAHIM SAIT v METTUPALAYAM NARAYANI BANK

1940 M W N 990 = 52 L W 474 =

A I R 1940 Mad 858 = (1940) 2 M L J 495

—Power given to two persons by name coupled with the description of the office—If can be exercised by survivor See RELIGIOUS ENDOWMENT—DEED OF

—POWER TO ALTER LINE OF SUCCESSION

1940 A W R (H C) 111

POWERS OF ATTORNEY—Construction—Authority to sue for and demand monies institute legal proceedings to settle claims and perform other matters or things

—Power of agent to assign decree obtained by principal See 1939 Dig, Col 959 GOVARDHAN DAS JAMNADAS v FRIEDMAN'S DIAMOND TRADING CO LTD

188 I C 878 = 13 B M 95

—Construction—Power to prosecute and defend cases in all Courts—If includes power to file appeal.

According to the ordinary canons of construction a power of attorney should be strictly construed as giving only such authority as it confers expressly or by necessary implications. Not only is it necessary to subject the express wording of the power of attorney to a strict analysis but it is equally important not to ignore the implications of the express authority which must be assumed to have been granted as being incidental to the effective execution of it. Thus where a power of attorney provided that S was authorised by the plain

## PRACTICE

tiffs to prosecute and to defend their cases in all the Courts of the State whether Civil, Criminal or Revenue on their behalf like themselves and file affidavits, held, that although an express authority to file an appeal was not conferred by this Mukhtarname yet by necessary implication the words to prosecute and to defend their cases in all the Courts of the State would include inter alia the authority to file an appeal (*Abdul Kishore, C v*) *Ranjitmal and Sukhdanarain v*) *INJAILAL v SURAJRAJ*

1910 Mar L R 23 (Civ)

—Construction—Power to sell immovable property—If includes authority to convey vested interest therein—Sale deed by holder of power conveying land with all rights—Vested remainder—If passes See 1939 Dig, Col 959 SEETHAYAMMA v VALLIPALEM

188 I C 534 = 13 B M 20.

—Construction—Power to settle, liquidate and adjust all accounts—If in liquid power to refer question to arbitration

A power of attorney must be strictly construed. An authority given to an agent to settle, liquidate or adjust all accounts between the principal and any other person does not confer on the agent any power to refer disputes to arbitration on behalf of his principal (*Abdul Kishore v*) RAMANATHAN CHETTIAR v KUMARAPPA CHETTIAR

1940 M W N 191 =

A I R 1940 Mad 650

PRACTICE See also THE RULES OF PRACTICE OF THE RESPECTIVE HIGH COURTS

—Admission—Erroneous admission on point of law—If binding—Withdrawal in appeal—Permissible

An erroneous admission on a point of law made in the lower Court may be withdrawn in the appellate Court (*Kames v*) KAMRAO NILKANTH v PURNA NAND SARASWATI SWAMI I L R (1940) Bom 480 = 180 I C 638 = 42 Bom L R 501 =

A I R 1940 Bom 281

—Appeal—Abatement—Suit against several persons including minors—Decision against plaintiff—Appeal by plaintiff without impleading minor defendants—Abatement

Where a suit against certain persons some of whom are minors is decided against the plaintiff and the plaintiff appeals without impleading the minor defendants the appeal does not abate if plaintiff is satisfied with a decree against the major defendants (*Agarwala v*) SHEDNANUN GOPE SHAHIDU KHATIK

A I R 1940 Pat 671.

—Appeal—Appellate Court—Duty of—Consideration of all points raised

Appellate Courts should always be careful in disposing of appeals filed before them. They should consider each and every point specifically mentioned in the memorandum of appeal excepting the points which are definitely given up by the appellants (*Abdul Qayyum C v* and *Kishu, v*) ANAND BAT v SHAMBU NATH

42 P L R J &amp; K 135

—Appeal—Appellate Court—Duty of—Power to call for private report from lower Court

An appellate Court is not entitled to call for a private report from the lower Court for its information. An appellate Court must decide an appeal from the materials before it and if it cannot do so it can only act in the manner provided by the Civil Procedure Code (*Harriet v* and *Manohar Lal, v*) PRATAP UDASI NATH v SUKHNED PRASAD

18 Pat 649 = 186 I C 291 = 6 B E 324 =

12 B P. 481 = A I R 1940 Pat 54

## PRACTICE

—Appeal—Appellate Court—Finding of fact  
—Reversal by final Court of fact—Duty of such Court

been arrived at after a consideration of all the materials on record (Tch Chand J) LALA RAM & CHHAN v 42 PLR 275

—Appeal—Appellate Court—Objection to evidence

—Appeal—Appellate Court—Powers—Power to

reject their app  
clearly prove t

—Appeal—Competency—Interlocutory order passed by consent

A decree by consent is not appealable But an may be Mosely HESTER 446 153

AIR 1940 AIL 467  
—Appeal—Duty of appellate Court in first appeal regarding matters of fact

The Legislature has thought fit to entrust to the first Appellate Court the final decision of all matters of fact on which the disposal of the suit depends. It is the duty of the appellate Court to realize the importance of its function and to exercise its powers with care and diligence. It should endeavour so to decide the cases that his judgment may carry a conviction, if not of its correctness, at least of a fair endeavour to place a correct valuation on the merits of

## PRACTICE.

the cases of both sides. He should never let it appear either to the public or to a superior Court that he has chosen to accept the evidence of one side or the other without due consideration of the

AIR 1940 Pat 33  
—Appeal—Finding of fact—Interference

The opinion recorded by a Judge who sees and hears the evidence is not to be set aside by an appellate Court. It is not to be ignored on the ground that it is of no value or that it is not supported by the evidence. It is to be respected unless it is shown to be perverse. (HARPURA v 10 IC 846—AIR 1910 Lah 329)

—Appeal—Interference—Credibility of witnesses

The appellate Court should not interfere with the decision of the trial Court as to the credibility of the witnesses who tried the case. It is for the trial Court to weigh the evidence and to decide as to the weight to be given to the evidence of the witnesses. The appellate Court should not be swayed by the probabilities of the case. (N KAN JJ) INI KUMAR 50 WN 96

recorded the evidence and seen the witnesses (Din Mohammad, J) BABU RAM v HARI RAM DAULAT RAM 42 PLR 374

—Appeal—Interference—Discretion—Order as to costs—Grounds for reversal See Costs—Discretion (1940) 1 MLJ 388

—Appeal—Interference—Evidence of witnesses—Opinion of trial Court See 1939 Dg Col 962 KUMAR NARENDRA NATH ROY v MIDNAPUR

—Appeal—New case in

A party cannot be allowed to set up a new case in appeal which is inconsistent with his pleadings. So where the suit was based on the simple plea that the line was the plaintiff's "Pattam" and it turned out to be wrong and it was found to be a joint line of the parties, the plaintiff could not be allowed to turn round and set up adverse possession. (Ammal Kallan C J) SESHNALE v NARMAI 1910 Mar LR 8 (Civ.)

—Appeal—New case—Prohibition bringing in a new case

When the prospect is to bring in a new case it is impossible to bring out a new case in the appeal. (Henderson and Handley, JJ)



## PRACTICE

KHALIFA v EMPEROR 189 LC 731=13 BO 127=  
41 Cr LJ 792-AIR 1940 Cal 350

—Appeal—New plea—Objection to maintainability of suit if can be raised in appeal—Duty of Court to raise when it comes to its notice

An objection to the maintainability of the suit, when it arises on the pleadings, may be raised for the first time in the appellate Court at the hearing of the appeal though the objection was not raised in the written state

BHATTA v SEETHAMMA 18 Mys LJ 409

—Appeal—New plea—Plea of limitation See 1939

Dig, Col 967 NARBHERAMJI v VIVEKRAMJI

186 LC 161=12 RB 299

—Appeal—New plea—Plea of limitation—  
up before issues in trial Court

Where an objection on the ground of limitation is raised in the trial Court in the pleas but is before issues it cannot be re-agitated in appeal party be allowed to lead any further evidence record is incomplete on the point (*Rhida Akhomed JJ*) SHARIFA BEGAM v CC WARDS AIR 1940

—Appeal—New plea—Plea of limitation

A plea of *lis pendens* is not a pure question of law but a mixed question of law and fact and cannot be permitted to be raised for the first time (*Abdul Ghami, Offg CJ and Singaraj JJ*) SEVARAM LUNIDARAM SATT THAPPA 44 Mys HOR 589=1

—Appeal—New plea—Plea not raised in trial Court or in grounds of appeal—If can be raised at hearing of appeal

A plea which was not raised in the trial Court or in the grounds of appeal cannot be allowed to be raised for the first time in the course of the hearing of the

—Appeal—New plea—Second appeal—Plea of minority to claim benefit of S 6, Limitation Act—If can be raised See LIMITATION ACT, S 6

1940 N LJ 607

—Appeal—New plea—Second appeal—Plea of res

judicata See 1939 Dig, Col 969 BALDEV SINGH v

SHER SINGH 185 IO 609=12 RL 306

—Appeal—New plea—Second appeal—Point of

parties are governed by Mahomedan law or custom can be raised for the first time in second appeal (*Almond, J C. and Mir Ahmad, JJ*) FAZL HAQ v DAWAR SHAH AIR 1940 Pesh 52

—Appeal—New plea—Pure question of law—If can be raised in appeal by defendant respondent for the first time

Where the defendant respondent in an appeal raises for the first time in appeal a plea involving a pure ques

## PRACTICE

tion of law, it can be allowed to be raised, if it arises upon the construction of a document or upon facts admitted or proved beyond controversy (*Rachhal Singh and Basrai, JJ*) SHIAN PARTAP SINGH v, BAISNI MADHU KUNWAR 189 IC 757=

13 RA 119=1910 A WR (HC) 300=

AIR 1910 All, 353

—Appeal—New point—Second appeal

A point of law which depends entirely upon admitted

—Appeal—Notice of date of hearing served on pleader—Pleader reporting no engagement—Ex parte decree—If justified

Where a pleader for the respondent on whom notice of

—Appeal—Parties—Execution—Objection by only one of several decree-holder to latter judgment debtor only of other decree

where in execution of a decree in a partition suit, a decree holder impleads not only the judgment debtor but all the parties in the partition suit, but the judgment-debtor files an objection petition impleading only the particular decree holder applicant as a party, without decree holders, and the separate miscellaneous articles in decree-holder and decided against the decree-holder can appeal against the decree of the judgment debtor the other parties to the suit who has limited the decree cannot object to the decree as is preferred and cannot

be heard to say that the appeal must fail for want of parties (*Harries CJ and Fa-I Ali JJ*) SANJU PRASAD v DEOKI SINGH

6 BR 94=185 IC 59=12 RP 284=

AIR 1940 Pat 147

—Appeal—Powers of Appellate Court—Apprecia

tion of evidence

The first appellate Court is entitled to examine the

Rel on (*Lobo and Weston, JJ*) BHAGWANDAS v LAUDHARAM 188 IC 613=13 RS 7=

AIR 1940 Sind 68

—Appeal—Remand—When to be made—Remand enabling parties to adduce fresh evidence—Propriety of

As a general rule it is undesirable to remand a case merely in order to give an opportunity to both parties to adduce evidence which might and ought to have been

## PRACTICE

put before the trial that such a remand to perjury. But where was no evidence as to estate out of which

## PRACTICE.

NOKHESING 190 I C 591 = 1910 N L J 292 = (McNair J) PURNENDU NATH TAGORE v

—Appeal—Suit for accounts—  
—Absence of cross appeal by plaintiff

get sufficient time and let his client in order to proper that cases should be circumstances (Varma v BACHU SINGH E 397 = 186 I C 798 = A I R. 1940 Pat 475

Where a Collector is dealing with sales his duty is if possible to avoid a sale by his proceedings, and as such, to adopt a helpful attitude and explain unmistakably to the judgment debtors what is the amount which they are required to deposit in order to have the advantage of O 21 when the question of a sale is raised.

Where a judgment debtor is misled by orders of the Collector and was powerless to make the proper deposit owing to the sale being confirmed on a day at the end of alone it could be confirmed, it was held the circumstances are such that the sale be set aside. (Burton, F C) AMBADAS v ALCEHANAI 1939 N L J 50

—Connected cases—Duty of lower Courts See 1939 D G Col 964 MAHOMED MUKHTAR KHAN v MST NASIMUNNISSA 1940 E D 72 (1)

—Costs—Discretion of Court—Lower scale—Reasons—Necessity

Costs are in the discretion of the Court, but it is the duty of the Judge awarding costs at a lower rate to give his reasons therefor (Davies) BANSI DHAR v AMRA 1940 A M L J 38

—Costs—Next friend—Order against—Liability of estate

If a next friend is ordered to pay costs the costs should be paid personally by him, and the estate will not be liable unless the Court so orders (Ameer Ali, J)

—Duty of Courts—Ascertainment of law applicable—Resort to expert witnesses—Propriety

It would not be tolerable that a Hindu or a Muslim in a British Indian Court should be put to the expense

GURDWARA PARBANDHAK COMMITTEE.

6

—Duty of Courts—Case of hardship—Alteration of law by ruling—Propriety

If a certain position of a party is inequitable the remedy lies in persuading the legislature to amend law. But the Court cannot make an alteration in

## PRACTICE

law by means of a ruling (*Sathr. J M*) SUKHDEO RAM v KALU RAM 1940 A W R (B R) 93 (2)  
 —Duty of Court—Comments on conduct of parties and others

—Duty of Court—Illegal contract—Illegality not pleaded by defendant

Courts should not enforce illegal contracts even if the illegality has not been pleaded by the defendant (*Wright J*) KO PA TU v AZIMULLA

187 I C 269 = 12 E R 311 = A I R 1910 Rang 73

—Duty of Court—Party failing to raise a plea with reference to statutory rule

If there is any question which compels the doing of a take note of that fact even the party concerned (*Stone*) RADHAKISAN v JAMNADAS 12 P N

fo  
an  
fo  
special issue in regard to custom is struck by the trial Court its decree is liable to be set aside in appeal (*Abdul Qayoom C J* and *Wright J*) MASHAN v NUR DIN

—Effect orders of superior Courts

Inferior Courts must treat the orders of superior Courts with respect, if they do not do so they can hardly expect the parties before them to treat the law with respect (*Reilly, C J* and *Nageswara Iyer, J*) GIRIYAPPA, In re 45 Mys H C R 1 = 18 Mys L J 229

—Duty of Court—Records of case—Proper maintenance

Each case must appear

(*Dattar*) HAZARI v MANGILAL.

1940 A M L J 46

—Duty of Court—Record to show that proper procedure is accurately followed.

## PRACTICE

It is desirable in all cases in which the rights of the parties are being decided, and especially in appellate cases that the record should show, as accurately and faithfully as is possible in the circumstances, that the law is being followed any legitimate grievance an opportunity to place the questions unless

—Duty of Court—Remarks in judgment

Judicial officers should be very careful in making remarks in their judgments and no remark should be made which is not in accordance with the record. (*Abdul Qayoom C J*) BHAGAT RAM v STATE. 42 P L R J & K 216

—Duty of Court—Witness—Condemnation by Court without affording opportunity of explanation—Propriety

It is both improper and unfair for a Judge to condemn a witness for a party of committing a serious offence, without recalling and questioning him about his evidence

Where the sole issue for decision is whether the two parties were husband and wife, and on this issue both the parties have adduced all their available evidence in

bound by the statement of *Beckett, J* JALAL DIN v NAWAB 42 P L R 765

—Execut on—Order merely consigning case to record room—Practice deprecated.

An order merely consigning a case to the record room is not one warranted by law, but unfortunately the Courts sometimes pass orders in such terms just to enable them to exclude the case from the list of pending cases. This practice is irregular (*J*) DAULAT RAM 3 (1940) Lah 516 = A I R 1940 Lah 78

—High Court—Appeal before single Judge—Reference of point of law to Division Bench—Power to refer after deciding part of appeal—Lahore High Court Rules and Orders, Vol V, Chap 3 B R 1 (ii) See 1939 Dig, Col 966 ALLAH DIN v ALAM SHER KHAN I L R (1940) Lah 88

## PRACTICE

## Inconsistent plea—Permissibility

A person cannot be allowed to take inconsistent positions with regard to the suit against him by a decree only is entitled to a decree suit by a turn round and say that alone is a decree (Abdul Rashid J) MALAN v. MANGTA MAL 42 P L E J & K 341

## Injunction See INJUNCTION

## Judgment—Contents—Appealable cases

In a judgment that is subject to appeal, it is desirable that there should first be findings of the facts and after that, so far as is necessary, findings on the questions of law, otherwise, the process is reverse, the findings of fact may be cursory or even omitted altogether (Pollock J) SULEMAN v. ABDUL SHAKOOR 188 IC 292=12 RN 328=1939 N L J 577=A I R 1940 Nag 99

## Judgment—Duty of judicial officer—Evidence not recorded by him

Even if the evidence was not recorded by the judicial officer who decided the case he ought to thoroughly go through the record and discuss in his judgment the material points involved in the case (Abdul Qayoom, C J) DURGA DASS v. JAGANNATH 42 P L E J & K 341

## Judgment—Language

Judicial officers should write their judgments in plain and proper language and should not indulge in symbolical or metaphorical expressions which are not necessary for the disposal of cases (Abdul Qayoom, C J and Krishna J) MALAYA MAL v. DHERU MAL BAIJNATH 42 P L E J & K 333.

## Judicial record—Recording of statements in legible manner—Duty of Judicial Officers

Judicial Officers must realise that if they indulge in bad and illegible handwriting they cause great difficulty to the appellate Courts. All statements should be recorded in a clear and legible manner (Abdul Qayoom, C J) AZIZ MOCHI v. STATE 42 P L E J & K 210

## New plea—Abandonment of case put forward in trial Court and appellate Court—New case in Second Appeal and Letters Patent Appeal—Permissibility

A party cannot be allowed to abandon the case put forward by him before the trial Court and before the first appellate Court, and set up a new case in the High Court in second appeal or letters patent appeal (Harries, C J and Fazl Ali, J) MANGTU LAL BAGARIA v. SECRETARY OF STATE 18 Pat 8 187 IC. 727=12 RP 647=1940 P W N 6 BR 549=A I R 1940 Pat

## New plea—Adverse possession—If can be set for first time in second appeal

The question of adverse possession must necessarily depend on facts and a point of this kind cannot be raised for the first time in second appeal (Bright J) MA TO v. MAUNG E RVU 190 IC 609=13 ER 86=A I R 1940 Rang 156

## New plea—Appeal new plea in See PRACTICE

## APPEAL

## New plea—Estoppel—When can be raised second appeal

Provided the necessary facts have been pleaded and proved the defence of estoppel is a question which can be raised for the first time even in appeal (Dunkley J) MADAN GOPAL v. SU 189 IC 735=13 ER 61=A I R 1940

## PRACTICE

affirmation of facts—If can 1939 Dig, Col 968

189 IC 66=13 ER 120

New plea—Objection that

appeal to the High Court

192, C P Code, affects the jurisdiction of the Court, and can therefore, be allowed to be raised even for the first time in an appeal under 15 of the Letters P

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## PRACTICE

—Pleadings—Amendment of motion—Effect on note—Objection not raised by Waiver See 1939 Dig SHIVNARAYAN 1

—Pleadings—Amendment—Powers of Court—Suit for rent against three persons in respect of land alleged to have been held at a particular jama—Subsequent amendment stating that rental had been split up as a result of transfer by one defendant to others—Permissibility

A landlord brought a suit for rent against three

A.I.R. 1940 Bom 38

## PRACTICE

h it is an accepted principle that it is not every between pleading and proof that is fatal that militate against the fundamental principle that y should obtain a decision on facts which he has ided and which were not put in issue at all

(Grille J) BRIJLAL PRASAD v MAHANT LALDAS I.L.R. (1940) Nag. 48=187 I.O. 764-

12 R.N. 301=1940 N.L.J. 99=

A.I.R. 1940 Nag. 125

—Pleadings and proof—Variation—Effect—Suit on title—Decree on possession—Power to pass See 1939 D.G., Col. 976 KARUPPANNAN AMBALAM v SUNDARAJA AYYAR 190 I.O. 181=13 R.M. 375=

A.I.R. 1940 Mad. 71

—Variation—Test—Duty of

MAHOMED HUSSAIN

186 I.O. 45=

12 R.L. 340

ul default—Necessity Mortgagee in possession

case an order charging a charge of wilful

know

R. 917

DBHURI

21 R.M. 440

—Pleadings—Amendment—Suit as full owner and disclaiming benami character—Case found against—Plea persted in appeal—amendment to make claim c sibility See 1939 D.G. MANDVIWALLA

—Pleadings—Amendment—Expression 'special damage' indicated

Where in a suit for the grant of a perpetual injunction the expression 'special damage' is not used in the plant but a reference is made to venience suffered by the plaintiff plant should be allowed (Addu Wair J) ALI JOO v RAZAK MIR

42 P.L.R.J. & K. 97

—Pleadings—Amendment—possession of share by Hindu include claim for maintenance Permissibility See MYSORI

—RELIEF

—Pleadings and of Court

Court should be care in accordance with the pleadings or upon the facts prov ed at the trial but consistent with the allegations made

—Pleadings—Contents—Plaint in suit for defamation

A.I.R. 1940 Nag. 125

—Pleadings—Easement—Distinct rights—Private

and a be d s

inctly pleaded A claim to a public right of way will include a claim to a quasi public right JAMINI RANJAN v PROMODE RANJAN

44 C.W.N. 1029

ngs—Issues—Fraud—To be specific See of 1131 TULSHIRAM v CHUNNILAL

I.L.R. (1940) Nag. 149

—Pleadings—Statement in written statement—Defendant when adversely affected by

If a defendant is to be adversely affected by a state

A.I.R. 1940 Cal. 393

—Precedents—Decisions based upon conception

## PRACTICE.

The Division Bench is a final Court of appeal in an Indian High Court unless the case is referred to a Full Bench. One Division Bench should regard itself bound by the decision of another Division Bench on a question of law. If a Division Bench does not regard as binding the decision on a question of law by another Division Bench, the only right and proper course is to refer the matter to a Full Bench. (See *Prasad v. Iyengar* and *Somappa*.)

VENKATANARAYANA RAO  
12 B.M. 270-51 L.W. 408-  
A.I.R. 1940 Mad. 356-(1940) 1

—*Precedents*—Privy Council  
High Court—Effect on decisions of the Board. See 1933 D. PRASAD v. IYENGAR 129 L.

—*Precedents*—State decisions  
courts in India. Naturally, the courts in India are bound by the decisions of cases which go back many years. (*Hareesh C. J. Fazl Ali*.)  
J.S. COMMISSIONER OF INCOME TAX v. KUMAR & AMARSHIA NARAIN SINGH

1940 I.T.R. 663-21 Pat. L.T. 207-  
A.I.R. 1940 Pat. 633 (S.B.)

—*Precedents*—State decisions—Principle of—Decision affecting title to land—Rule as to

Authorities or decisions which may affect title to immovable property ought not slightly to be disturbed, but should generally be followed on the principle of *stare decisis*. (*Erasmus C. J. and Wasonden, J.*) CHHOTI BAI DAULATRAM v. MANSUKHLAL JASRAJ

42 Bom. L.R. 1018  
—*Precedents*—Value of—Generality of expressions found in judgment—If governed by particular facts of case

Every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found. (*Vicconet Mangam*.) PUNJAB CO-OPERATIVE BANK, LTD. v. COMMISSIONER OF INCOME-TAX LAHORE.

52 L.W. 928-  
1940 I.T.R. 635-A.I.R. 1940 P.O. 231 (P.O.)

—*Presumption*—Decisions on the law

*Priorities*  
Assuming that out of two suits decided on date the suit which bears the earlier number deemed to have been decided first, there can be no doubt that it can be proved that the subsequent suit was decided earlier. (*Sohal Ahmad and Bahai, JJ.*) SHIAM SUNDAR v. SARMADI BEGAM 188 I.O. 386-  
12 E.A. 15-1940 A.W.R. (H.O.) 262-  
A.I.R. 1940 All. 171

It is to be decided by the Justice

Special  
An  
be adm

## PRACTICE

If it arises in a really substantial case. The Board will not grant special leave to appeal in a matter concerning the construction of a very exceptional section which will have no application in the future and is a technical matter. (*It is not a matter of law.*)

NEOLAPATI v. AMAR KRISHNA  
L.L.R. (1940) Kar. (P.O.) 1-1940 P.W.N. 32 (P.O.)

—*Privy Council*—Concurrent findings of fact—Interference—Practice

The Privy Council would be slow to depart from the rule of practice which though not a rule of law nor a rigid rule plays an important part in the exercise of the prerogative—that concurrent findings of facts will not be disturbed. (*At R. Jayakar*.) SATISH CHANDRA v. DHARANIDHAR

87 I.A. 32-  
I.L.R. (1940) 1 Cal. 266-  
I.L.R. (1940) Kar. (P.O.) 47-185 I.O. 618-  
12 R.P.O. 117-44 C.W.N. 177-51 L.W. 49-  
1940 O.A. 112-71 C.L.J. 1-1940 O.L.R. 64-  
6 B.R. 291-21 P.L.T. 91-1940 A.W.R. (P.O.) 33-  
1940 O.W.N. 104-1940 P.W.N. 110-  
1940 M.W.N. 172 (2)-42 Bom. L.R. 295-  
42 P.L.R. 158-1940 A.L.J. 409-  
A.I.R. 1940 P.O. 24-(1940) 1 M.L.J. 371 (P.O.)

—*Privy Council*—Criminal cases—Interference—Practice. See 1919 Dig. Col. 974 CYRIL HERTRAM PLUCKNETT v. EMPEROR

41 Cr. L.J. 60  
—*Privy Council*—New plea—Admissibility of evidence. See 1930 D. 1074 KONTARAM

*raised*  
Where for the first time in an appeal to the Privy Council a question is raised that the respondent is not a pardanashin lady and there was neither an issue framed nor the point raised at the trial the question is one of fact and it would not be permitted to be raised at that

## PRACTICE.

## Privy Council—Objections—Value.

The observations of the  
must be followed by High Co  
Nath and Braund JJ)

OFFICIAL LIQUIDATOR  
1940 A.W.E. (H.C.) 6Privy Council Rules—A 9—Applicable  
Federal Court appeals

Sulaiman J.—Rule 9 of the Privy Council  
dated 9th February 1920, has not impliedly been made  
applicable to Federal Court appeals on account of its  
being covered by the wider definition of 'Code' con-  
tained in O I R 2 of the Federal Court rules, though  
not included in the context of O 9 R 1 of those rules  
(Gwyer, C J., Sulaiman and Faradachastur JJ)

Privy Council—Special leave—Points other than  
those on which application was admitted—If can be  
argued

When an application for special leave to appeal to the  
Privy Council is granted no points except those on  
which the application was admitted can be argued  
before their Lordships of the Privy Council (Lord  
Thankerton) J F BROWNBE & VIVIAN MACMILLAN  
A.I.R. 1940 P.C. 219

Privy Council—Suit for administration and  
accounts—Examination of details of accounts—Practice  
See 1939 Dig Col 974 ATISUKHLAL & SATVARLAL  
I.L.R. (1939) Kar (P.C.) 331Procedure—Accounts—Suit for preliminary  
decree—Necessity for—Defendant suppressing account—  
If justifies final decree straight away See 1939 Dig,  
Col 975 PALANIAPPA CHETTIAR & RAMANATHAN  
CHETTIAR 189 L.C. 31=13 E.M. 118Procedure—Execution sale—Application for  
setting aside—Allegation of want of jurisdiction to sell  
—Application headed wrongly under O 21 R 90, C  
P. Code—Effect—Question of jurisdiction—If to be  
ignored

The fact that an ap-  
sale is headed under  
not mean that the ap-  
can be ignored. The  
clearly alleged that t  
the property (Kas  
MAHADEV CHINTA  
190 L.C. 394=

## Procedure—

Relief—Right to See 1939 Dig, Col 975 VENKATA  
RAMANA & VARAHALU A.I.R. 1940 Mad 308

## PRACTICE.

one for possession  
"in adverse pos-  
plaintiff alone—  
—Claim to parti-  
for partition in  
favour of other co-tenants—Propriety. See 1939 Dig  
r SEETHAMMA  
A.I.R. 1940 Mad 236  
—Right of party  
two remedies he is er

## Relief—Grant of—Futile declaration of right

A Court will not grant a declaration of right which  
would be stamped with something in the nature of  
futility A.I.R. 1916 P.C. 117, Kel on, (Tehchand  
and Dalip Singh, JJ) SAIN DASS CHAWLA  
I.L.R. (1940) Lab. 171=

O 618=12 B.L. 438=42 P.L.R. 707=  
A.I.R. 1940 Lab 1

## Prayer for larger relief—Grant of

asks for a larger relief but the Court  
is entitled to a smaller relief involved in  
that larger one it can give that smaller relief (Chatterji  
and Manohar Lal, JJ) KHANTA MANDALANI &  
HEM KUMARI DEBI 190 I.C. 353=13 E.P. 190=  
7 B.R. 5

Relief—Suit for declaration and possession  
on basis of purchase—Relief on basis that  
plaintiff is benamidar of vendor.

Where a plaintiff sues for declaration of title  
and for possession alleging purchase under a  
certain kobala but fails to prove his title based  
on the kobala, the Court must dismiss his suit  
on the ground that he has no title. It cannot  
pass a decree in his favour upon the basis that  
he is the benamidar for his vendors, which is  
nobody's case. (Mulherjee and Roxburgh JJ)  
BHUSAN CHANDRA DAS & MANUJENDRA DUTTA  
CHOWDHURY 70 C.L.J. 410=  
A.I.R. 1940 Cal 148

Relief—Suit for rent as owner—Decree as trustee  
of certain debts—If can be granted

If a person sues to recover a sum of money as rent or  
damages for use and occupation in respect of a piece of

ed a decree for damages for use and occupation. (Apar-  
wala, J) BACHU NARAIN SINGH & MAHOMED

## PRACTICE

UMROO

180 I.C. 733=7 B.R. 46=  
21 Pat L.T. 336=A.I.R. 1940 Pat 555  
—Relief—Suit on promissory note—Plaintiff alleging joint  
possession with father but separation from nephews—Separa-  
tion not proved—Decree in favour of plaintiff as Karta

—Relief—Suit to declare invalidity of alienation  
by Hindu widow—Plaintiff alleging that he is nearest  
reversioner—Allegation found against—Declaration on  
footing that nearer reversioners are precluded from  
suing—If can be granted See HINDU LAW—REVER-  
SIONER. 1940 P.W.N. 342

—Demand—Duty of Court—Decision of some of  
the issues—Undesirability

When an appellate Court remains  
desirable when sending it back to  
new trial to decide at the same time  
If it should be necessary in some  
stances to have a fresh trial then the appellate Court  
should be careful not to prejudice some of the issues  
(*Stone C.J. at Bar*) SHYOLAL & JUGAL  
KISHORE I.L.R. (1940) Nag. 538=  
1940 N.L.J. 350=A.I.R. 1940 Nag. 349

—Service of notice—Notice for appearance not  
served in time—Party's right to fresh notice

If a notice for appearance is served on a party after  
the expiry of the date stated in the notice the party is  
not required by law to appear in Court and find out  
what the proceedings are He is in all fairness entitled

## PRE EMPTION

*Singh and Sate J.J.* DERA SADH BISHNOIS v BASTI  
RAM 188 I.C. 616=13 R.L. 32 42 P.L.R. 168=  
A.I.R. 1910 Lah. 191

—Suit on judgment—When lies—Conditions—  
Decree against ward of Court of Wards—Execution  
leave of Court of Wards  
See C.P. CODE S. 47  
21 Pat L.T. 947  
ICE—PRECEDENTS

PRE EMPTION—Claim by plaintiff as co-sharer—  
Bare denial of status by defendant—Effect—Status  
how to be proved—Entry in khewat—Value See 1939  
Dig. Col. 976 ABDUL HAFIZ v MANOHAR LAL.  
14 Luck. 678.

—Costs in suit for—Vendee becoming co-sharer  
before suit—Dismissal of suit See COSTS—SUIT FOR  
PRE EMPTION A.I.R. 1940 All. 171

of Sylhet are  
pre-emption  
RAJNANDINI

PURKAYESTHA v ASWINI KUMAR CHOWDHURY  
72 O.L.J. 181=45 C.W.N. 96

—Decree for—Deposit within time—Reversal of  
decree in appeal—Withdrawal of deposit—Pre-emption  
decree in second appeal by High Court—Time for  
payment not extended—Inference See 1939 Dig. Col.  
977 KISAN DEWALOO MALI v GANGA BAI  
186 I.C. 21=12 R.N. 180

—Decree for—Time for payment—It can be ex-  
tended by appellate Court

But the situation of the suit is a material one and the  
parties on the basis of the altered condition when it is

—Improvements—Vendee's claim for compensation

—Subsequent events—Relief—Suit dismissed by  
trial Court as premature—Suit claiming to be so during  
appeal—Discretion of Court to grant decree

Where a suit on behalf of an institution which is  
dismissed by the trial Court as premature ceases to be so  
while an appeal from the order of dismissal is pending  
the appellate Court can properly exercise its discretion  
in favour of the institution and grant a decree (*Dalip*

1940 O.W.N. 375=1910 O.L.R. 191=  
A.I.R. 1910 Oudh 264

—Value of land—Opinion of witnesses—Value of  
The mere opinions of the witnesses without more  
of the grounds on which such opinions are based  
no value in determining the correct market  
property (*Sukhlamrao J.*) MET  
MUTANRAJ 1940 Mar



## PRE EMPTION

—Pre-emption of part of property—Rule against  
See 1939 Dig Col 978 **ABDUL HAFIZ v MANOHAR LAL**  
14 Luck 678

—Right of co-sharer—Principles—Co-sharer—Sale to stranger—Demand by co-sharer by purchaser—Suit for pre-emption  
part preliminary decree in partition decree in suit of co-sharer allowing on partition suit—Decree in part right of pre-emption

The right of pre-emption arises as between a co-sharer and a stranger. If the co-sharer ceases to be a co-sharer before the sale, the right of pre-emption is lost.

plaintiff and his seven brothers were maliks of a mahal. On 16-10-1936, one of the plaintiff's brothers sold his interest to the appellant. On 18-10-1936 plaintiff learnt of the sale, and forthwith made the first demand for pre-emption and made the second demand also the same day.

decree was passed in the partition suit, and on 25-2-1938, the plaintiff's suit for pre-emption was decreed and the plaintiff duly deposited the purchase money which he was directed to deposit by the decree.

that the plaintiff was entitled to a separate share in the

21 Pat.L.T 710—A.I.R. 1940 Pat 699

—Right of—Joint family property—Sale by father—Son's right of pre-emption

A Hindu minor son cannot pre-empt a sale of joint Hindu family property by his father (*Abdul Qayoom, C.J. and Kichlu, J.*) **PRITHI SINGH v SANDHUR SINGH**  
42 P.L.E.J. & K 261

—Right to claim—Conditions of—Occupancy tenant or tenant of garden or orchard—Right to pre-empt

A person claiming a right to pre-empt must be an owner. There must be *milk* or ownership in the pre-emptor. A person in the position of an occupancy tenant, or a tenant of a garden or an orchard has no right to pre-empt as he has no *milk* in the property. The right of pre-emption has always been restricted to persons who have proprietary interests (*Harriet, C.J. and Fazl Ali, J.*) **KRISHNA BAHADUR v GANGA PRASAD SAH**  
190 I.C. 577—13 E.P. 218—7 B.R. 89—21 Pat.L.T. 835

—Right to

## PRESY S C C ACT (1882), S 35

—Sale of a doubtful right—Test if any See 1939 Dig Col 979 **ABDUL HAFIZ v MANOHAR LAL**  
14 Luck. 678

—Transaction if a sale or lease—Factors which

Nasrana or cash payment, and the lessee is given full rights to deal with the property and the lessee is directed

—Vendee benamidar for co-sharer with preferential right of pre-emption—Suit against, if lies See 1939 Dig Col 980 **SANKAIA PRASAD v RUKMANI**

I.L.R. (1940) A.I.L. 91—186 I.O. 559  
12 E.A. 414—1939 A.L.J. 1150—A.I.R. 1940 A.I.L. 87.

Waiver of right—Pre-emptor bidding at auction n. not made nearly for a year—Effect of See Dig, Col 980 **ALLAH DIN v ALAM SIBER**  
I.L.R. (1940) Lah 83

—Wajib ul arz—Construction

When the *wajib ul arz* says that there is a custom of pre-emption on a transfer of a share, there is no reason to think that it applies only to transfer of a complete share and not to a

The whole includes the part and is on which it could be said a share is not pre-emptible when (*Harriet, J.*) **BAUR AHMAD**  
15 Luck. 261—185 I.C. 277—12 R.O. 207—1940 O.A. 42—1129—1940 A.W.R. (C.C.) 20—A.I.R. 1940 Oudh 116

## SMALL CAUSE COURTS ACT

9—Calcutta Small Cause Court  
B—Service of summons by registered post—Proof

Service of summons by registered post can be legitimately inferred from the evidence of the postal peon that the postal cover was tendered by him to the defendant and he refused to accept it. In such a case a mere denial by the defendant that it was ever delivered to him is not sufficient. He must prove that it was never

—Ss 35 and 31—Transmission order under S 31 by Registrar—If judicial order.

The language of S 35 of Presidency Small Cause Courts Act is sufficiently wide to empower the Registrar to make any order in respect of execution matters "which a Judge of the Court might make under this Act". An order for transfer of a decree to another Court for execution made by the Registrar on an application of the decree holder under S 31 of the Act is a

## PRESY. S. C. C. ACT (1882), S. 43

—B 43—Scope and effect of—If modifies ordinary law of relationship of landlord and tenant—Order against tenant—If affects sub-tenant—Rights of latter to retain possession—Evidence Act, S. 116

Ordinarily a tenant must deliver possession before he can dispute his landlord's title and thus estoppel ordinarily continues even beyond the term of the tenancy unless the tenant first delivers possession. Eviction or something equivalent to it must take place before the lessee can deny the title of the lessor. This rule is not modified by S. 43 of the Madras Presidency Small Cause Courts Act. It merely lays down the procedure to be adopted by the Court in applications for recovery of possession of immovable property. If the occupant has proved that the tenancy has been determined and that his lessor had no right to possession, then it is sufficient cause for the purpose of the section, why the Court should not pass an order for possession. The section does not purport to lay down any law modifying the ordinary law with regard to relations between landlord and tenant. Though a landlord has obtained an order against his tenant that he retain possession until he is ousted (Hornall J) VENKATA 1910 M W N 308-A

## PRESIDENCY TOWNS INSOL. ACT (1909) Ss 7, 17 and

Court—Pension papers deposited by insolvent as security for loan—Power of Court to direct creditor to return them to insolvent. See 1939 D. G. Col. 981 JGN 1719 FORDRICK, J. 1871 C. 692

12 R. C. 602—A. R. 1910 Cal. 192

—(Rangoon), S. 7—Scope—Discretion of Insolvency Court

S. 7 of the Rangoon Insolvency Act is not limited in its scope to matters in which the Official Assignee by the operation of the Insolvency Law claims a higher title than that which the insolvent himself would have had. The section is also not restricted to cases within Ss 55 and 56 of the Act. But it is a matter of discretion for the Judge sitting in insolvency whether in any given case he should deal with such a claim in the Insolvency Court, or refer it to the machinery of the ordinary Courts. He may refuse to decide a dispute in his insolvency jurisdiction if the rights of third parties are difficult to ascertain apart from a regular suit, or if it is not in the interests of the Court to decide the dispute on motion. (Dunkley J) T. S. N. CHITRAY 1911 In the matter of

1939 Rang. L. R. 731—187 I. C. 45—12 R. R. 351—A. R. 1940 Rang. 39

—(Rangoon), S. 7, provision—Applicable to jurisdiction of Insolvency Court

The provision to S. 7 of the Rangoon Insolvency Act is not limited in its application to cases where the third party has been actually examined under S. 31. Its application is restricted to the two matters arising under sub-Ss. (4) and (5) of S. 31, that is under sub-S. (4) the question whether the third party is indebted to the insolvent, or under sub-S. (5) the question whether the third party is in possession of property belonging to the insolvent. Unless both parties agree at such proceedings or such possession is denied by the third party, the jurisdiction of the Insolvency Court to try the matter is excluded, and it does not matter whether the Court

## PRESY TOWNS INSOL. ACT (1909), S. 9

—S. 9—(5) of property and the Official relates to possession only and not to title. Where the ownership of or title to the property is in dispute this sub-section has no application, and consequently the jurisdiction of the Insolvency Court under S. 7 is not barred in such cases by the proviso to the section. (Dunkley J) T. S. N. CHITRAY 1911 In the matter of

1939 Rang. L. R. 731—187 I. C. 45—12 R. R. 351—A. R. 1940 Rang. 39

—S. 8 (1)—Limitation—Application for review—Limitation applicable—Limitation Act, Art. 162 173 and 181

—S. 8 (1)—Power of Insolvency Court to review—Extent of—If subject to restrictions as under S. 47, C. P. Code

Under S. 8 (1) of the Presidency Towns Insolvency Act, read with S. 90 a Court exercising insolvency jurisdiction has the power of review conferred on a Court of ordinary original jurisdiction by O. 47, C. P. Code. But while the jurisdiction to review conferred by S. 47, C. P. Code is of a restricted nature, the power of an insolvency Court under S. 8 (1) of the Presidency Towns Insolvency Act to review need not vary on orders made by it is not so restricted but is far wider. (Lal, J) THAKURDAS HALLIWAL, J.

I. L. E. (1910) No. 213

—S. 8 (1)—Right to apply for review—Power of party to proceedings brought to be reviewed—Scope of

The intention of the Legislature in enacting S. 8 (1) of the Presidency Towns Insolvency Act was to extend the jurisdiction of an insolvency Court in the matter of review to cases not covered by S. 47, C. P. Code but review under S. 8 (1) is available to a party who is a party to the proceedings brought to be reviewed or reviewed. The right to review through appeal under S. 47, C. P. Code can be exercised only by a party to the proceedings proceeding with a claim of set-off or counter-claim. Under S. 8 (1) of the Act a party has a right of appeal not only to the Court in a proceeding but to the Insolvency Court. But no person appointed by an order made by the Insolvency Court as a party to an insolvency proceeding has a right of appeal under S. 8 (1) of the Act as a party to a proceeding brought to be reviewed or reviewed. (Lal, J) THAKURDAS HALLIWAL, J.

I. L. E. 1910 No. 213

—S. 8 (2)—Power of Insolvency Court to review—Extent of—If subject to restrictions as under S. 47, C. P. Code

## PRESY. TOWNS INSOL ACT (1903), S 13

A debtor can comm—  
The fact that there  
subsisting when a cre  
would not prevent  
attachment. (*Leach, C J. and Horwill, J.*) **EBRAHIM  
SAIT v METTUPALAYAM NARAYANI BANK, LTD**

1910 M.W.N. 980=52 L.W. 474=

A.I.R. 1940 Mad 938=(1910) 2 M.L.J. 495

—S 13 (2)—Duty of Court—Proof of debt—  
Decree obtained by creditor against debtor—If  
conclusive

Under S. 13 (2) of the Presidency Towns Insolvency  
Act, the Court must be satisfied as to the validity of the  
debt of the petitioning creditor before it makes an order  
of adjudication. The question which arises in invol-  
vency is not merely one between the petitioning creditor  
and the debtor. The rights of other creditors of the  
debtor have to be considered. The Court must there-  
fore consider whether the petitioning creditor has in fact  
a good debt, and it is not bound by any decree as be-  
tween the petitioning creditor and the debtor. The  
debtor may be estopped from disputing the decree, but  
the Insolvency Court is not estopped. The Court must  
be satisfied about the validity of the debt in the interests  
of the other creditors.

*Kamra, J.*—A petitioning creditor may rely on the  
decree which he has obtained against the debtor as  
evidence of his debt, but it is not conclusive. The In

—Ss 11 and 18—Applicability—Probate pro-  
ceedings—Heir at law adjudicated insolvent—Pro-  
bate of will—

of a probate of a will of a person whose heir-at-law is an  
adjudicated insolvent. The adjudication of the heir at

available as ground of exemption from imprisonment  
for failure to pay maintenance under S 488 (3), Cr. P.  
Code.

A protection order under S 25 (3) of the Presidency  
Towns Insolvency Act does not protect the debtor from

## PRESY TOWNS INSOL ACT (1903), S 42.

arg—If belong to insolvent, See 1937

refused under  
Debtor's right to.

When the discharge has been refused under S. 39 (1)  
it is open to the insolvent, with the Court's permission  
to renew his application for discharge under S. 42 (1).  
S. 39 contemplates the refusal of a discharge in two  
contingencies: (1) where the insolvent has been con-  
victed of any of the offences referred to in the section,  
and (2) when any of the facts referred to in S. 39 (2) of  
the Act are found to exist. In the first contingency the  
Court has no option but to refuse an order of discharge.  
In the second contingency the Court has a discretion to  
grant or refuse such an order. S. 42 is general in its  
terms and cannot be restricted in its application to the  
second contingency referred to above without doing  
violence to the plain and unambiguous language of the  
section. (*Lobo, J.*) **KABLA UMER, In re**

183 I.C. 778=13 B.S. 1=A.I.R. 1940 Sind 85

—(Rangoon), Ss 39 (1) (b) and 60 (2)—Suspend-  
tion of discharge—Court's open—Addition of appropriate  
order is a suspension order—Power of Court.

What S. 39 of the Rangoon Insolvency Act enacts, so  
far as the two kinds of suspension of discharge are con-  
cerned is this: either that the suspension must be for a

e, the suspen-  
se when four  
creditors A  
to his order  
under S. 60

(2) of the Act.

*Per Blagden, J.*—The orders contemplated by S. 39

the  
insol  
re is  
ire of  
the  
A.M.A.

1940 Rang. L.R. 650

—(Rangoon), S. 39 (1) (c)—"Creditors"—

Col 1030 MAUNG TIN

C. 536=12 R.R. 273=

A.I.R. 1940 Rang 22

intention of the Legi-  
who had been refused  
may have been for the

A.I.R. 1940 Sind 85

—S 42 (1)—Scope—Relief under—Refusal under  
S. 39 (1)—If a bar See PRESIDENCY TOWNS INSOL-  
VENCY ACT, SS. 39 AND 42

A.I.R. 1940 Sind 85

—S 46—Hindu son taking joint property and

ath—Subsequent  
provable in son's  
ority over son's

the separate pro-  
undivided pro-  
money creditor  
ove the father's  
ter S 46 of the  
creditor is not,

## PRESY TOWNS INSOL ACT (1909), S 53

however, entitled to claim priority over the creditors of the son in the insolvency of the son in respect of his debt. There is nothing to prevent a creditor of the son from getting satisfaction out of the father's property which has devolved on the son, and no distinction can be drawn between a father's creditor and a son's creditor. (Pandurang Aor and Venkataramana Aor vs) CHOKKALINGAM CHETTIAR & OFFICIAL ASSIGNEE OF MADRAS. 52 T.W. 89.

—S 53—Applicability to administration under  
S 108 See PREBENDARY TOWNS INSOLVENCY ACT  
Ss 104 and 109 (1910) 2 M L J 979

—(Rangoon), S 56—*Fraudulent preference—*  
*Payment by debtor to secure his own safety*

Where a creditor presses his debtor for payment not with a view to defrauding anybody, but from the anxiety which often operates in a creditor's mind to get back his dues without delay and threatens to expose his financial position which would result in loss to the debtor and the debtor to secure his safety pays the creditor, his dominant motive being the securing of his

——(Rangoon), Es 56 and 57—*Distinction*

*Per Dunkley, J.*—The distinction between S 57 and S 56 is that the good faith which is in question under S 57 is the good faith of the creditor who receives the payment whereas under S 56 the good faith in question is good faith of the debtor who makes the payment (*Adams, C. J. and Dunkley, J.*)

1940 RANK L.R. 360

189 L. CO. 633—13 JUL 46—AIR 1940 MADE 168  
—E 57—Issue of proof—Official A's agree  
—Establishing that transaction took place after Innovery  
—Ira that it took place before adj. cation and without  
notice of presentation of petition—Onus See 193) DE.  
Col 943 OFFICIAL ASSIGNED KARACHI 5 DIA-  
NOMAL I L R 1940: Kar 235-

—(Rangoon), Sa. 57 and 9—Payment by instalment to creditor before adjudication—Creditors—If a creditor—Payment of amounts to act of insolvent under S 9

§ 57 protects the payment of money by an insolvent to a creditor before adjudication provided the creditor had no notice of any insolvency petition. There is no payment done and amount to an act of insolvency as contemplated by § 9. Where it is clear that the creditor considered that the money which was paid to him was his own money which belonged to him by virtue of the deed of assignment which the debtor had previously executed in his favor, it cannot be said that the creditor was acting in bad faith in receiving that payment from the insolvent. The law forbids under § 57 and the payment done and amount to an act of insolvency under § 9 (1) (Kaiser C Food, Inc., v. J. W. Moore Official Assignee).

— Kangoon) B (S—burm un-w-ll est .  
all's in my copy & 7x1114.

—The (Juni) spruce has been found and appears  
for the first time in the mountains of the north of the  
state of Idaho. It is very common in the mountains of the  
state of Idaho. It is very common in the mountains of the  
state of Idaho.

## PRESY. TOWNS INSOL. ACT (1909) E 86

*assignment—Insolvency of debtor—Payments after—  
Right of Official Assignee to recover back from creditor*

A promise to pay a debt out of a specific fund in existence at the time whether payable *in present* or *in future*, amounts to an equitable assignment of the fund so as to entitle the assignee of the fund to claim payment out of the fund. But a promise by a debtor to pay when he receives a debt due to him from a third person does not constitute an equitable assignment so to charge the debt in the hands of the third person. If a person borrows money from his banker and agrees to pay the creditor banker out of his future salary or income, the transaction is only a mere contract to assign until the salary or income comes into existence and will become complete only after the salary becomes due or after the income accrues and not before. Where an employee borrows money agreeing to repay it in monthly instalments and authorizes his employer to withhold a part of his salary every month and to pay it to his creditor until his debt is discharged, it can at best amount only to a contract to assign the future salary as and when it is earned. There is no completed assignment or charge, and the creditor cannot enforce the transaction as against future salary as against the Official Assignee on the insolvency of the employee. But if the employer goes to pay the creditor even after the insolvency of the employee and the creditor who has paid value receives it without notice of the insolvency the Official Assignee cannot recover back from the creditor the payments received by him after the insolvency. Under s. 60 of the Presidency Towns Insolvency Act only so much of the salary as is *accrued* to be paid by the Court under s. 60 (2) to the Official Assignee vests in him and the balance is at the absolute disposal of the insolvent. Though the creditor cannot be allowed to have any advantage over the other creditors of the debtor lender, once an advance is made under s. 60 (2) the rest of the salary is absorbed at the disposal of the insolvent and even if the lender is spent by the insolvent the Official Assignee cannot complain and he cannot therefore sue for the arrears after the payments made to the creditor of the salary after insolvency. (*Samayya J.*) OFFICIAL A.S. NER  
P. M. & M. RAILWAY LIAISON & CO-OPERATIVE  
LARAN LANE LTD. 1915 M.W.N. 110

—, Mangoch, Es 71 (1) (a) and 123-1 were  
of funerals were of (M) and Ave since See 1972 Int  
Col 1031 MALING TIN L In the matter of  
1861G 236-12 RR 271 AIR 1962 EAGLE

1979 JF (J) 101 Mat. No. 1, 1st ed.  
186 IC 35-17E 75  
AIE 1862 MAT. NO.

----- 2. To the fact that the law is a power to do  
for the protection of the state and the people and the  
country, for the sake of the people and the country.

[illegible]

**PRESY TOWNS INSOL ACT (1909), S 106**

would have fetched a better price and might have benefited him in the long run. But he will have a legal

make an application to the Court under S 86 of the Act depends in each case upon the circumstances of that particular case, and if a flagrant case occurs by which the insolvent may be aggrieved, he will have a right to make the application. No rules are prescribed as to the exact manner in which a sale in insolvency is to be conducted but the Official Assignee must conduct the sale fairly and reasonably. The Court will set aside a sale of this kind if it is proved that there has been fraud on the part of the sale which is a mistake on the part of the Official Assignee. *Derbyshire* 1910 P.W.N. 25 = 21 Pat. L.T. 129 = A.I.B. 1940 Pat. 114

**S 108 (1) (a)—Order for administration of an insolvent estate in a summary manner—Failure to obtain leave of Court to appeal—Appeal if can be entered**

Under S 106 (1) (a) of the Presidency Towns Insolvency Act it is quite clear that where an insolvent's estate has been ordered to be administered in a summary manner, no appeal lies from any order of the Court except by leave of Court and so where no leave is

**Ss 108 and 109—Scope and effect of—Attachment of estate of deceased debtor in execution—Subsequent order for administration under S 108—Effect of on attachment—Preferential right**

There is no difference between the administration of the estate of an insolvent who is alive and the administration of the estate of a person who dies insolvent but was not adjudicated before his death. The administration in insolvency of a deceased debtor's estate under S. 109 of the Presidency Towns Insolvency Act must necessarily mean that the uncharged assets of the estate are to be utilised for the general

as a mere attachment creates, no creditor against the estate is in any other ordinary creditor. If a little virtue in the provisions of Act

**Quere—Whether S 53 of the Act appl administration in insolvency of a deceased estate (Leach C J and Horwill, J)**

**OFFICIAL ASSIGNEE OF MADRAS**  
1940 M.W.N. 1251 = 52 L.W. 894 = (1940) 2 M.L.J. 979

**PRESS AND REC (XXV OF 1887), 1**

Single sheet of paper—If book or paper

A document consisting of a pamphlet

Act does not contemplate a single sheet of paper in which a writer publishes an article relating to some current topic to be regarded as a copy is required to be delivered to the printer under the Act (*Chatterji*, MAHANTI, EMPEROR

1940 P.W.N. 601

**PRINCIPAL AND AGENT.**

**S 16—Scope—Conversion and sentence—Legality.**

S 16 of the Press and Registration of Books Act does not provide for conviction and sentence (*Chatterji*, J)

**PRIN**

ACT, SS 182 AND 238

**Accounts—Liability to render—Heirs of agent.**  
See 1939 Dig. Col. 984 *BADRI NATH UPADHYA v KESHU KUMAR* 1910 P.W.N. 25 = 21 Pat. L.T. 129 = A.I.B. 1940 Pat. 114

**Account—Suit by principal for—Amounts due to agent by way of commission on separate and independent contract of agency—Right of agent to credit for same, when suit thereon is barred by time.** See 1939 Dig. Col. 985 *VASANTA RAO ANANDA RAO v GOPAL RAO SETHU RAO* 188 I.C. 626 = 13 B.M. 41 = A.I.B. 1940 Mad. 279

**Accounts—Suit for—Books of account returned to principal—Principal when entitled to preliminary decree.** See 1939 Dig. Col. 985 *BADRI NATH UPADHYA v KESHU KUMAR* 1910 P.W.N. 25 = 21 Pat. L.T. 129 = A.I.B. 1940 Pat. 114

**Authority of agent—Agent authorised to sell by public auction—Power to sell by private treaty by calling for tenders—Government officer acting in excess of authority in contravention of rules—Government—If bound—Holding out—Ratification.** See *MYSORE ROAD TRAFFIC AND TAXES ACT* 18 Mys.L.J. 283.

**Authority of agent—Proof.** See 1939 Dig. Col. 985 *PUNJAB CO OPERATIVE BANK LTD., LAHORE v MAHOMED YUSAF* 187 I.C. 650 = 12 B.L. 469.

**Burden of proof—Agent mixing up own moneys with principal's—Agent using principal's name for benami transaction of his own—Onus.** See 1939 Dig. Col. 985 *VASANTA RAO ANANDA RAO v GOPAL RAO SETHU RAO* 188 I.C. 626 = 13 B.M. 41 = A.I.B. 1940 Mad. 279.

**Conversion—Agent purchasing goods for principal with own money and on his own responsibility—Title to goods—If passes to principal—Agent pledging goods—Liability to principal for damages for conversion—Position of agent vis a vis principal—If that of an**

goods himself advancing  
of his principal and  
y liable, the property in  
o the principal until the  
for the purchase is paid to  
pass. If  
purchased  
of the prin

principal there can be no question of conversion by him in respect of the goods title to which still remains vested in him and the principal cannot have any right to

chased by him or on his account has the right to claim possession of the goods before paying the purchase—see also the seller has a lien for the unpaid

# PRINCIPAL AND AGENT

*Quarry*—Whether the agent in such circumstances can be deemed to be a tacit pledgee, since he pays the purchase money for the goods out of his own pocket and is therefore entitled to replege the goods? (*Patanjali Sastri v VENKATASUBBIAH & SATYANARAYANA MURTHI* 1940 MWN 187(2)—51 LW 611(2)—A.I.R. 1940 Mad 489—1940(1) M.L.J. 465)

—*Debt incurred by agent on behalf of principal—Liability of principal—When arises*

Where the agent, who was managing a mill for and on behalf of the principal executed a promissory note for and on behalf of the principal in the absence of evidence to show that he had authority to incur debts on behalf of his principal the principal is not liable (*Alfa Bn. v LAKHJEE & SINGH DASS* 188 I.O. 120—12 R.R. 359—A.I.R. 1940 Rang 97)

—*Duties and liabilities of agent—Agent when liable to pay interest* See 1939 D.G. Col 945 TOTA RAM v ZALIM SINGH 187 I.O. 277—12 R.M. 504—A.I.R. 1940 All 69

—*Kachcha arthiya and Fakka arthiya—Distinction between positions of* See CONTRACT ACT s 30—AP FLICABILITY 1940 A.L.J. 48

# PROVIDENT FUND RULES, P. 17.

—B 3 (1)—*Provident fund money—When attached*

Under S 3 of the Provident Funds Act, the provident fund money continues to retain its character of a compulsory deposit only so long as it remains in the hands of the provident fund trustees. Once it is paid out, it loses that character and may be attached in the hands of the party to whom it has been paid (*Alfa Bn. v BARAMDEO PANDEY & MRS FAY SMITH* 44 O.W.N. 637)

—B 3 (2)—*Applicability*

In order that s 3 (2) of the Provident Funds Act may apply, it must be shown that under the rules of the provident fund the amount standing to the credit of the deceased in the provident fund is payable to the dependent of the subscriber (*Sen, v BARAMDEO PANDEY & MRS F SMITH* 44 O.W.N. 636)

—B 4—*Dependents and nominees—Rights of—Conflict between Act and Rules*

Under s 4 of the Provident Funds Act, the rights of nominees which include the rights of the nominee's representatives, are expressly postponed to the rights of dependents. The amount standing to a

artha, it is a matter of the application of simple arithmetical methods to facts within the knowledge of both parties (*Monroe, v BALKISHAN & CO v RAM NATA SAIGHAL* 183 I.O. 690—13 R.L. 99—42 P.L.E. 170—A.I.R. 1940 Lah. 185)

—*Place of accounting*

In the absence of a specific agreement or special circumstances showing both the accounting and the payment there a Pacca Arthiya or a Commission made at the place where the business of agency is transacted (*Sukhdanarain, v JAWANNAL v HARAKMAL* 1940 Mar L.E. 53 (Civ))

—*Rights and liabilities of agent—Duty to account—Agent recovering costs of litigation for principal and spending only part of same—Right to retain balance for himself* See 1939 D.G. Col 986 VASANTA RAO ANANDA RAO v GOPAT RAO SETHU RAO 188 I.O. 628—13 R.M. 41—A.I.R. 1940 Mad 299

appointment of a receiver of the sum lying to the credit of a deceased in the provident fund. Under ordinary circumstances such sum would be paid to the person who has taken out letters of administration to the estate of the deceased. But where there is a suit pending and the

estate of the deceased is in the way of preserving the fund if he gets a decree (*Sen, v BARAMDEO PANDEY & MRS F SMITH* 44 O.W.N. 636)

—B 5 (1)—*Applicability*

S 5 (1) of the Provident Funds Act has no application when there are no rules of the provident fund providing for payment to a nominee (*Sen, v BARAMDEO PANDEY & MRS F SMITH* 44 O.W.N. 636)

—B 5 (1)—*Deceased nominating certain person for payment of Provident Fund amount—Power to*

39 D.G. Col 12 R.C. 629 7, Note I—wife dies

## PROV INSUR SOCIETIES ACT (1912), S 22.

## PROV. INSOLV. ACT (1920), S 6

shown that the accused were aware of the true facts. A director who signs the balance sheet on the assurance given by the managing director and the auditor without knowledge of the true facts cannot be held to be guilty under S 22. But such of the signatories as are aware

family firm—Adjudication of firm insolvent—Power of manager to sell property for firm debts—If vests in C Share of minor coparceners

The disposing power exercisable by the manager of a Hindu joint family business is a power which he may exercise for his own benefit within the meaning of (d) of the Provincial Insolvency Act and therefore the insolvency of a joint family firm and of the manager's powers of disposal of the entire joint family property including the shares of minor co-

of transferee for mesne profits—Question as to—Jurisdiction of Court to inquire into See 1938 Dig, Col 1172 KISSANLAL v DINAH

ILLR (1940) Nag 486

—S 4—Questions of title—Jurisdiction of Insolvency Courts

S 4 confers very wide powers on the Insolvency Court to try all questions of title priority.

—Ss 4 and 56 (3)—Realization of assets in other people's hands—Receiver's remedy—Limitation See 1938 Dig, Col 1171 GODBOLT v NANI BAI

ILLR (1940) Nag 293

—Ss 4 53 and 56—Relative scope of—Power to attack partition made more than two years prior to insolvency See 1938 Dig Col 1171 GODBOLT v NANI BAI

ILLR (1940) Nag 293

—S 4—Scope—Adverse decision against Official Receiver in Civil Court—Proper remedy—Application

(Somayya J) ARUNACHAIAM CHETTIAR v OFFICIAL RECEIVER, COIMBATORE 1940 IN WN 519—A.I.R. 1940 Mad 735

—S 4—Scope—Suit on mortgage—Insolvency proceedings to set aside mortgage—Pendency of—If Civil Court to decide S 11

—(1940) 1 M.L.J. 647. by insolvent found void

insolvent is found to be also fall along with it. (Bhida, J) DABHARI 188 IC 327—1= A.I.R. 1940 Lah 124.

—Ss 4 (2) and 53—Decision in proceeding under S 53—Res Judicata

Obiter—A decision of the Insolvency Court in a pro

judicata in view of ASIA KHATUN v AMARENDRA NATH 14 CWN 586=71 C.L.J. 584=1940 Cal 578.

f adjudication on creditor to set 9, R 13—Appli 6 B E 567=167 IC 794.

—S 5(1)—Scope of powers conferred by

By virtue of the provisions of S 5(1) an Insolvency Court under the Provincial Insolvency Act may exercise all the powers which are conferred upon it as a Civil Court of original jurisdiction unless such powers are contrary to the provisions of the Provincial Insolvency

has no inherent power to revoke an order of discharge (Sarkar, J) P.C.N.

—13 B.R. 38=1940 Rang. 158.

—S 6—"Fraudulent transfer"—Test to deter-

mine The words 'with intent to defeat or delay the creditors' or having a 'view to give preference to a' are mental acts and can only be determined if one looks into the surrounding circumstances. The true test to apply in such cases is whether the alleged insolvent is in a position to pay his debt, and whether the which has been transferred bears such a the whole property that the remaining or the





## PROV. INSOLV. ACT (1920), S 35

—Ss. 35 and 37—Order of ar  
be observed. See 1939 Dig, Co  
BHAGIRATH PERSHAD v KANHAI  
186 I.C. 615=12 R N 231=

—S 37—Direction to distribu  
ment—Legality.

S. 37 of the Provincial Insolvency Act does not  
allow an Insolvency Court on annulling an insolvency  
to proceed to distribute the assets of the insolvent  
among any of his creditors. The insolvent  
Court is either to return the  
on condition that he furnish  
it available to the creditors.  
Court may direct the propert  
ver to vest in a certain p  
Yorke, J.

—S  
annulmen

The order of discharge, is not equivalent to annul

## PROV. INSOLV. ACT (1920), S. 43

refunded to the Official Receiver and to direct the latter  
not as the Official Receiver but as a person appointed by  
the Court under S 37, to divide the amount rateably  
n the Insolvency  
and Patanjali  
CHETTIAR t

189 I.C. 573=  
M.W.N. 157=  
1 M.L.J. 228

—S. 41—Order of discharge—Receiver if can b  
appointed after.

An order of discharge in the insolvency proceedings

—S 41 (2) (c)—Construction—Order of discharge

error—C. L. L. 404, O. 71.

There is no basis for the view that when the Court

—S 42—Application for discharge by insolvent

n agreement between  
to suspend insolvent  
N 999, LADHA RAM

187 I.C. 424=

at L. 456=42 P.L.E. 92

ets"—If includes future

9. FLEMING v. OFFICIAL

185 I.C. 551=

12 R.L. 301.

transactions—Court if can

corrected, under Ch 4/ C. F. Code, if the matter can be

See 1938 Dig, Col. 1182

a wide discretion. The annulment of the adjudication  
does not mean that the debtor who is adjudicated is  
necessarily to be placed in possession of the property

—Ss 43 and 48—Scope and effect—Adjudication  
—Sust by legal representative of insolvent pending in  
solventy—Subsequent annulment of adjudication—Effect



## PROV. INSOLV. ACT (1920), S 18

diligence on his part (*Din Mahomed, SINGH v GULAB SINGH* AIR 19

—S 18—Insolvency petition—Date

See PF

receives

order of

date of

R 5

Mere publication in the Official to be issued under S 19 of the

## PROV INSOLV ACT (1920), S 28

28, can only refer to proceedings which are at the time of adjudication or else simultaneous. It cannot be invoked where the suit is pending at the time of adjudication (*Aiya Bu and Masley, JJ*)

—Ss 20 and 28 (2)—Hindu joint family—Insolvency of father—Attachment of sons' shares by creditor—Sale of sons' shares by Official Receiver—If rights of attaching creditor—Appointment of receiver per Col 991.

—Ss 20 and 28 (2)—Hindu joint family—Insolvency of father—Attachment of sons' shares by creditor—Sale of sons' shares by Official Receiver—If rights of attaching creditor—Appointment of receiver per Col 991.

—Ss 20 and 28 (2)—Hindu joint family—Insolvency of father—Attachment of sons' shares by creditor—Sale of sons' shares by Official Receiver—If rights of attaching creditor—Appointment of receiver per Col 991.

*Quære*—Whether a claim for future maintenance is a debt provable in insolvency? (*Burn, J*) RANGA

mission to Col 994

19510 542=12 RE 245

—S 23—Applicability—S 488 (3), Cr P Code—If imprisonment in execution of decree or order for payment of money—Protection order—Effect of See CR P CODE, SS 488 (3) AND

—S 28 (2)—Leave of Court—Necessity—Suit against insolvent after presentation of petition but before date of adjudication—*Thereafter*, construction of the word 'thereafter' in S 28 (2) of the Provins

y the doctrine of orders 'and there of an order of b's (2) Hence wit or any other creditor of the t after the pre order of adjudication' (*JJ*) U TUN ang L E 386= 940 Rang 234

—S 23 (2)—Property—Insolvency of Hindu anager—Power to sell family property—If vests in Receiver See ACT SS 2 (d) AND 23 (2) I L R (1940) Kar 375

—S 23 (2)—Property—Insolvency of Hindu anager—Power to sell family property—If vests in Receiver See ACT SS 2 (d) AND 23 (2) I L R (1940) Kar 375

—Ss 28 and 29—Scope and applicability—The operation of S 28 affects all creditors [other than secured creditors—28 (6)] whether they are judgment creditors or not, or have proved their debt. The section clearly enacts that during the insolvency proceedings no creditor shall

—S 28 (2)—Scope—Insolvency of Hindu father—Sons' share—Proceedings to attach or sell—Leave of Court—Attachment or sale of Official Receiver to See 1939 Dg Col R v SABARATNAM I C 159=12 E M 520 Receiver—Ownership of 985 RAM RATTAN v

## PROV. INSOLV. ACT (1920) S 28

FAZAL HAQ

I.L.R. (1910) Lah. 40=  
187 I.C. 839-12 R.L. 495.—S 28 (2)—*Effect of property interest in*  
*the estate*

Under the provisions of S 28 when an order of adjudication is made the property of the insolvent vests in the Court or the receiver with effect from the date on which the petition for insolvency is made. *Amoud J*  
C) SURE KAJ SHAH v. SIR GAUHAIR SHAH  
190 I.C. 158-13 R. Pesh. 21-A.I.R. 1910 Pesh 36

—S 28 (4)—*Contract on and after—Devolution of*  
*estate on undischarged insolvent—Subsequent discharge*  
*—Suit of creditors to recover property belonging to*  
*estate from stranger re—Maintenance suit*

Plaintiff was adjudged insolvent in 1919 and had not obtained his discharge by 1929 when an estate belonging to him was sold to a third party.

The debt can be fairly estimated or not and to make an order accordingly. The High Court has no jurisdiction to decide whether the debt can be fairly estimated or not.

no creditors came forward to prove their debts or take any steps between 1919 and 1929 nor did the Official Receiver take any steps prior to 1929 or between 1929 and 1931

Held that there was no recovery of possession of the property of the insolvent law to suggest that it was intended to benefit strangers (*Varadachariar and Abdur Rahman J*)

SURAYYA v. MANGAYYA 1910 M.W.N. 19

—S 28 (5)—*Colony land—Rights of tenant—If*  
*vest in receiver—Punjab Col—of Government*  
*Lands Act S 18*

The receiver or the creditor lay hands for any purpose on the Punjab Act V of 1912 as none of the rights or interests Government can be attached by decree or order of a Court or judgments (*Din Mahomed J*)  
OFFICIAL RECEIVER SARGO

—S 29—Scope and appli  
INSOLVENCY ACT SS 28 AND  
CABILITY 1910 Rang.I.R. 511

—S 33—*Proof of debt—Mode of*  
The Act provides a formal method of proving a debt and this is the only method which can be applied in so

## PROV. INSOLV. ACT (1920) S. 35.

of the company placed the purchaser's name upon the list of contributors

Held that the possibility of a call being made by the company when it was in existence upon the uncalled balance of the share money due upon the shares was a contingent liability. The debt of Rs 500 i.e., the balance due on the shares was provable in the insolvency and therefore the liability therefor disappeared when the order of discharge was made (*Young, C.J* and *Din Muhammad J*) *In re MUSLIM BANK OF INDIA*  
I.L.R. (1910) Lah. 458-180 I.C. 211-  
13 R.L. 157-42 P.L.R. 754-  
A.I.R. 1910 Lah 304

—Ss 33 and 34—Scope—Partnership between persons for limited period—Subsequent dissolution—Withdrawal of one—Promissory note by partner to with

the debt can be fairly estimated or not and to make an order accordingly. The High Court has no jurisdiction to decide whether the debt can be fairly estimated or not.

—Ss 34 and 28 (7)—Effect of *See* 1939 Dig  
Col 996 KEWAL KRISHAN v. SPECIAL OFFICIAL  
RECEIVER, PUNJAB I.L.R. (1940) Lah. 50-  
42 P.L.R. 867

—S 34 (2)—Claim to future maintenance by

—S 35—Scope—*Ex parte* order of adjudication passed on last Saturday being clearance day—Propriety of—Liability to be set aside *See* 1939 Dig., Col. 996  
RAM DAYAL BABU LAL v. LAKHU SAO  
185 F.C. 257, C.P.D. 270-12 R.F. 427-  
A.I.R. 1940 Pat 58

character of—Adjudication  
of insolvency has in  
set aside the adjudication

## PROV. INSOLV. ACT (1920), S 35

—S 37—Direction to distribute assets after annulment—*Legality.*

S. 37 of the Provincial Insolvency Act does not allow an Insolvency Court on annulling an insolvency to proceed to distribute the assets of the insolvent

Yorke, J.

—S 37—Order of discharge—If equivalent annulment of adjudication

The order of discharge, is not equivalent to annul

—S 37—Review—Power of Court to alter or modify order under section—Inherent power to rectify error—C. P. Code, O. 47.

There is no basis for the view that when the Court

## PROV. INSOLV. ACT (1920), S 43

refunded to the Official Receiver and to direct the latter not as the Official Receiver but as a person appointed by the Court under S 37, to divide the amount rateably in the insolvency  
and Patanjali  
CHETTIAR v

13 R.M. 301=51 L.W. 231=1940 M.W.N. 157=  
A I R 1940 Mad 375=(1940) 1 M.L.J. 228

—S 41—Order of discharge—Receiver if can be appointed after.

An order of discharge in the insolvency proceedings

P. N. GHOSE v N. K. K. N. CHET  
140 Rang L.R. 392=189 I.C. 421=  
3 R.R. 38=A I R 1940 Rang 156

42—Order suspending discharge until  
—Legality See 1939 Dig. Col. 997

—S 41 (2) (c)—Construction—Order of discharge  
does if in time,  
of. See 1939

I v KASTUR

=12 R.B. 245

arge—Suspend

Matters to be

or discharge is

made See 1939 Dig. Col. 999 SEETHARAMAPPA v.  
RAMAPPA 186 I.C. 231=12 R.M. 604

—S 42—Application for discharge by insolvent  
Order based on agreement between

## PROV INSOLV ACT (1920), S 44.

—S 44 (1) (c)—*Applicability—Insolvent playing fraud on creditor and preventing him from appearing in insolvency proceedings—Deliberate concealment of debt—Absolute discharge in spite of S 42 (1) (a)—If bar to the order is*

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th. . . . .  
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fraud the creditor from appearing in the insolvency Court and obtaining his share of the assets he cannot

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—S 46—*Steps and operation—If controlled or cut down by O 8 R 6 C P Code*

The privileges and rights which are given in S 46 of the Provincial Insolvency Act (which is made applicable to companies in liquidation by S 229, Companies Act) are based upon equity and fair dealing. It would be very harsh if the Official Receiver, as liquidator of a company could demand by a debtor and at the same time creditor, for an equal or a larger share must be content with a dividend distribution which can be made from R 6 C P Code, is in no way arising in insolvency or liquidation (*Gentle J*) SUNDARAVARADAN v OFFICIAL LIQUIDATOR, T N B SUBSIDIARY CO 1939 M W N 1231 A.I.R. 1940 Mad 266

—S 47—*Mortgagee—Ignoring insolvency—Remedy*

S 47 of the Provincial Insolvency Act provides for various steps which could be taken by a mortgagee. If instead of taking one or the other of these courses he

concerned. If however a secured creditor does not assess under S 47 and does not even ask the Court to say that

## admission

Where a petition for insolvency was presented on the 8th March 1934 and was ordered to be entered in the Court register on the 13th March 1934, when the Court also passed an order directing the insolvent to furnish security for his appearance

Held that the petition was admitted on the 13th March 1934 if not earlier (*Bhude J*) PUNJAB NATIONAL BANK, LTD v OFFICIAL RECEIVER, KARNAL 188 I C 833-13 R L 50-42 P L B 29- A.I.R. 1940 Lah 166,

## PROV INSOLV ACT (1920), S 53

—S 51 (1) and (3)—*Applicability—Sale in execution of award under Co-operative Societies Act—Decree holder is entitled to preference over other—Protection of title of bona fide purchaser—Madras Co-opera*

ncial Insolvency Act . . . . .  
execution of decrees . . . . .  
sense, but should be . . . . .  
he d to apply to sales in execution in general including a . . . . .  
sale in execution of an award by the Registrar or the . . . . .

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U M I . . . . .  
(1940) 2 M.L.J. 388

—S 51 (3)—*Applicability—Execution sale of insolvent's property after adjudication—In all cases meaning of*

S 51 (3) of the Provincial Insolvency Act applies even in cases in which there have been auction sales and

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decree and order for sale—Subsequent insolvency of mortgagor—Sale in execution—Official Receiver not brought on record—*Bona fide purchaser—If protected—Title of execution purchaser as against receiver and vendee from him* See 1939 Dig, Col 1001 ANNA MALAI CHETTIAR v LAKSHMANA CHETTIAR 189 I C 386-13 R M 274

—S 52—*Judgment-debtor adjudged insolvent after sale and before its confirmation—Sale confirmed before confirmation—Decree holder's*

See 1939 Dig, Col 1002 v SPECIAL OFFICIAL RE 186 I C 588-12 R L 405- A.I.R. 1940 Lah 37

—Ss 53 and 54—*Absence of receiver—Right of creditor to apply under Ss 53 and 54—Leave—Inter-*

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190 I C 885-1940 N L J 420- A.I.R. 1940 Nag 393

—Ss 53 54 and 37—*Annulment of adjudication—Proceedings under Ss 53 and 54 if can be started or continued thereafter* See 1938 Dig, Col 1186. SULEMAN v LAXMAN I.L.R. (1940) Nag 204

—Ss 53 and 54—*Applicability—Fraudulent transfer or preference—Mortgage to creditor executed under threat of legal proceedings—If voidable preference.* See 1939 Dg, Col 1002

## PROV. INSOLV. ACT (1920), S. 53

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alienations.

S. 53 of the Provincial Insolvency Act applies not only to voluntary alienations, but also to transfers in *invitum* (*Abdur Rahman, f.*) *HANUMAVAMMA v. OFFICIAL RECEIVER, GUNTUR*.

1940 M.W.N. 259 = A I R 1940 Mad 749

—S 53—Applicability—Mortgage executed more than two years before insolvency. See C. P. CODE, S. 11 51 L W. 429 = (1940) 1 M L J. 647

—S. 53—Challenge of transfer under—Transferee, if can plead that petitioning creditor was a bogus one—Plea that insolvency proceedings are a nullity, if open—Plea, if pertinent to enquiry.

A transferee whose transfer is challenged by the receiver under S. 53 of the Provincial Insolvency Act is entitled to raise defences pertinent to the enquiry. It could not be said that the plea that the sole creditor of the insolvent is a bogus one and that the insolvency

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Reliance  
Col 11agent—  
Onus.  
An :

## PROV. INSOLV. ACT (1920), S. 54

LL.B. (1940) 2 Cal. 189 = 71 C L J. 432 =  
44 C W N. 718 = A I R. 1940 Cal. 417.

—Scope—Transfer of colony land—Recent challenge—Punjab Colonization of Government Lands Act, S. 18.

S. 53 of the Provincial Insolvency Act contemplates only such property as is available to the creditors or the Official Receiver for the purposes of insolvency, and as a colony land governed by the Punjab Act V of 1912 is excluded from that category, its transfer by the Government tenant could not be challenged by the Official Receiver. (*Din Mahomed, f.*) *DOST MAHOMED v. OFFICIAL RECEIVER, SARGODHA*.

42 P.L.E. 144

—Ss. 53 and 54—Scope—Suit by wife for maintenance against husband claiming charge—Subsequent application by husband in insolvency—Decree in suit creating charge—Subsequent order of adjudication—Application by Official Receiver to avoid charge—Decree—If to be annulled—Principles.

A suit for maintenance was filed by the appellant against her husband on 23-8-1932, praying for a

## PROV. INSOLV. ACT (1920) S 54

found to have been actually to prefer a creditor. The fact that a preference in favour of the alienee-creditor inevitably follows from the act of the insolvent does not warrant the inference that the insolvent's intention was

the debtor, nor were they persons for whose preference any special reason existed. It was found that at the time of the execution of the deed the debtor thought that the property with the other debts also in d proof that the dominant debtor was to prefer the two the prejudice of the other suggested rather that this was the more pressing claims upon certain of the assets

## S 54—Fraudulent transfer—Threat of legal

## OFFICIAL RECEIVER, SARGODHA

A.I.R. 1940 Lah 6

—Ss. 56 and 77—Power of Insolvency Court acting under S 77—Direction to Official Receiver to take possession and sell property—Power to enquire into claims by third parties after sale and delivery to purchaser

## PROV. INSOLV. ACT (1920) S 58.

pointed on adjudication—Reversal of order of adjudication on appeal before completion of realizations or distribution—Source of payment—Absence of direction in order of appointment—Effect—Remuneration of official receiver—Amount fixed by order of court 1939 Dig. Col 1189 LAXMAN PRASAD

I.L.R. (1940) Nag 161

—Third party sitting up title in himself—Procedure to be followed—Meaning of expression 'has not a present right to remove' in S 56 (3)

the Act. The power to remove is a present right to the Civil Court. It is not necessary for the Official Receiver to enquire into the title of the insolvent.

Insolvency Court takes upon itself the powers of a Civil Court. It should proceed like a Civil Court with reference to pleadings, issues and evidence (Stone, C.J. and Bose J.) PANDU v WAMAN 190 IC 455=

13 B.N. 92=1940 N.L.J. 283=

A.I.R. 1940 Nag 233

—Ss 57 and 80—Official Receiver—Power to bind creditors—Proceeding by creditor to obtain personal decree against insolvent for debt due under mortgage—Official Receiver made party—Decree, if binds all creditors—Power of Official Receiver to order decree holder to prove debt in insolvency

It cannot be said that the Official Receiver as such

der—Sale of insol.  
by Court—Regis-



## PROV. INSOLV. ACT (1920), S 58.

BAYYA PILLAI. 1940 Rang L R 263=  
190 I.C. 816=A I R 1940 Rang 186  
—S 58—Sale of insolvent's mortgage interest by  
Court—Registered instrument—Necessity See TRANS-  
FER OF PROPERTY ACT S 54 AND PROVINCIAL

187 I C 839=12 R L 405

—S 66(2)—Scope—Hindu insolvent—Application  
for payment of amount for meeting daughter's marriage  
expenses—Maintainability

There is no authority for holding that a Hindu  
insolvent has a right to claim out of his estate the ex-  
penses that he contemplates incurring for celebrating the  
marriage of his daughter. Such a claim cannot be made  
as a matter of right. The proper course for the insol-  
vent is to ask for an increase in his allowance for the  
period during which he contemplates celebrating the  
marriage of his daughter (*Kunhi Raman, J*) APPA

in its ordinary meaning Any person aggrieved by  
reason of such a statement can appeal (*Bose, J*)  
VITHOBA BHANAJI v. ANNA BALIRAM  
188 I

—Ss 6E

alleged debt

See 1939 D

NATH

—S 68

Right of insc

Col. 1004.

—Ss 7'

insolvent for

ability by insolvent.

An Insolvent has a right of appeal against an order of

## PROV. INSOLV. ACT (1920), S 78.

NATIONAL BANK LTD v. OFFICIAL RECEIVER, KAR-  
NAL. 188 I.C. 833=13 R L 50=42 P L R 29=  
A I R. 1940 Lab. 168.

—S 75—Decision under S. 54—Second appeal—

See 1939 Dig. Col. 1004. KIRPA RAM v. SAWANA  
RAM. 42 P L R 243.

—S 75 (1)—Decision on point of jurisdiction—  
Right of appeal—Final order of adjudication made  
before filing of appeal.

Per Rau, J—A creditor who is aggrieved by the  
Court on the point of juris-  
diction under S. 75 (1) of the  
fact that a final order  
made before the filing of the  
that right. (*Nazim Ali and*

—S 75 (2)—Appeal—Competency—Disallowance  
of plea of res judicata with reference to a creditor's  
application to set aside a transfer

—S 78 (2)—Construction—Exclusion of time  
under—Right to—Conditions—"Proved"—Meaning of

Act that a creditor had realise  
tion sale after the admission o  
falls under S 4 of that Act  
decision is, therefore, compete

51 L W. 697=  
-A I R 1940 Mad. 716=  
(1940) 2 M L J. 17.

## PROV INSOLV ACT (1920) S 78

—S 78, Proviso—*Proved* meaning of  
The word proved occurring in the proviso to S 78 of the Provincial Insolvency Act is used not in its ordinary sense under the said Act but in its technical insolvency sense and that for the purpose of this proviso a debt is part of it which are taken. The word proved is satisfied when a debt has been delivered or sent (*Fraud J*) K M DUTTA.

—S 79—Calcutta High Court rules K 9—Creditors served with notice of hearing of application for discharge of some order discharge—Appeal if

r DINA

—S  
—Proce  
against insolvent and due under mortgage—Official Receiver made party—Decree if bin is all creditors—Power of Official Receiver to order decree-holder to

## PROV S C C. ACT (1857), S 23.

KISHANBAI I L.R. (1910) Kar 154 =  
188 I.O. 553 = 12 R.S. 284 = A.I.R. 1940 Sind 105

—S 23—*Suit transferred under—First appeal—If lost*  
When the suit is transferred under S 23 Provincial

—S 23(1)—*Question of title involved—Duty of Small Cause Judge*

Where a question of title is involved namely whether the plaintiff has any subsisting right to the property so that he should also be entitled to claim a share in the trees which stood on that property, the Small Cause Court should take action  
1) (*U r Ahmad J*) ABDUL AZIZ v  
189 I.O. 314 = 13 R. Pesh 8 =  
A.I.R. 1940 Pesh 34

—S 25—*Finding of fact—Interference—Powers of High Court*

It is true that in a case depending entirely on appre-

—*Depositor or security—If must be lodged along with application*  
con-  
the

—*Depositor or security—If must be lodged along with application*

The terms of the proviso to S 17 (1) of the Provincial Small Cause Courts Act are mandatory and the deposit of the decretal amount or the furnishing of security is a condition precedent to the entertaining of an application

—S 25—*New plea—New ground of exemption from limitation—If can be raised during arguments*

A ground of exemption from limitation based on S 5 of the United Provinces Postponement of Execution of Decrees Act being one of law, even though it is not raised either in the trial Court or in the grounds of review is not an exception under S 25 Provincial Small Cause Courts time during the hearing  
(*Islam Hasan J*) RAJ

462 = 1940 O.W.N. 938 =  
1940 O.A.

reason—If under grounds of law, etc.

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## PROV. S. O. C. ACT (1887), S. 25

Cause Courts Act has wider powers of revision than those given by S. 115, C. P. Code, and does, from time to time, interfere in exercise of those powers on grounds similar to those which would be admissible under the

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The power of the High Court under S. 25 of the Provincial Small Cause Courts Act is very wide and

## PROV. S. O. C. ACT (1887), Sch. II, Art. 35.

have been made by a private person in his private capacity could not affect the question. Where the Inspector-General of Prisons cancelled the acceptance of the tender

## Act—Jurisdiction of Small Cause Court.

A suit for an account contemplated by Art. 31 of Sch.

petitioner obtained an *ex parte* decree in a cause suit in the Court of a Subordinate Judge respondent applied and had it set aside on terms. In revision, the High Court set that order aside and remanded the proceeding for disposal. The Court of the Subordinate Judge before it was disposed of, and the cause was therefore transferred by the District Judge of the District Munsif, who had jurisdiction limited and did not extend to the amount involved in the suit. The Munsif dismissed the application for setting aside the *ex parte* decree, holding that there was no sufficient cause for the defendant's non appearance. On appeal the District Judge reversed the decision. Against that a revision petition was referred to the High Court and it was contended that the appeal to the District Court was incompetent as the suit was a small cause suit.

Held, that the District Munsif's jurisdiction was limited and he could not set aside the original suit. The suit should be treated as an original suit and the decree was therefore appealable. (Patanjali)

HARIHARA AYYA

Sch. II, Art. 31—Jurisdiction of Small Cause Court—Cancellation of acceptance of tender and forfeiture of deposit by Government Officer—Suit for damages

one for all under the Contract Act, his employer for an account so and hence the case Court. (Leach)

## Sch. II, Art. 31—Applicability—Suit by one co-owner against another for share of profits

another co-owner of the property is not a suit for the share of profits of the property. Act will not apply because the profits were not wrongfully received by the defendant. (N. L. J. 22)

## Sch. II, Art. 35—Cognisability—Suit for value of dhani leaves cut from plaintiff's land—No mention of theft or trespass—Second appeal—C. P. Code, S. 102

Where all that the plaintiff alleges is that the defendant, without permission and consent, occupied and used plaintiff's land and cut and removed some dhani leaves, and there is no mention of theft or trespass, a suit for the value of the dhani leaves is of a small cause

## PROV. S. C. C. ACT (1897), Sch II, Art 41.

land of the plaintiff is covered by Art. 35 (ii) of Sch II of the Provincial Small Cause Courts Act (*Din Moham-mad, J.*)

—Sch

pattadar—

transferred to another before apportionment of assess-ment—Suit for contribution—Jurisdiction of Small Cause Court.

MENT ACT, S

—Sch II, A

joint property—

—Suit against

Small Cause Court

The plaintiffs and defendants were co-sharers in joint property and were jointly liable for the Government revenue thereof, though their respective shares were divided. The plaintiffs had paid their shares of the revenue but the defendants defaulted and the plaintiff therefore also paid the defendants' share of the revenue to avert a revenue sale and sued the defendants for contribution.

Held that the suit was not cognizable by the Court of Small Causes in view of Art 41 of S. II of the Provincial Small Cause Courts Act. (*Fermis, J.*)  
SAROOR FATIMA v SHFIKH MD, SAFIUDDIN

1940 P.W.N 709.

PUBLIC DEMANDS RECOVERY ACT (III OF 1913) S 34—Suit for cancellation of certificate—Court fees. See COURT FEES ACT, SCH II, ART. 17 (1) 44 O.W.N 255

PUBLIC GAMBLING ACT (III OF 1867) (as amended in U P) S 1—Scope of.

It is not all gaming of digits which constitutes the house, vessel, etc., in which the instruments of gaming are kept, a common gaming house. If the winning is by any other than

occupy place.

covery

as to purpose of steps—Inference

appear, that the place was being used as a common gaming house (*Allison J.*) QABUL SINGH v. EM PEROI

prosec

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front of panstall.

Where a panstall is very small and customers never actually enter it as there is no room for them, but they stand in front of it, and carry on the betting or gaming,

## PUNJ. ALIEN. OF LAND ACT (1900), S 3

the area in which the customers usually stand should be included in the definition of 'common gaming house' (*Emperor, J.*)

764=1940 N.L.J. 297.

—Legality—Boundaries

If the description in the search warrant is otherwise adequate to identify the place without ambiguity, it is

boundaries are not specified. (*Gruer,*

GOVINDPRASAD

190 I.C. 764=1940 N.L.J. 297

Alienation of Land Act (XIII of 1900)

Colonization of Government Lands Act (V of 1912)

Court of Wards Act (II of 1903)

Courts Act (VI of 1918)

Custom (Power to Contest) Act (II of 1920).

Debtors' Protection Act (II of 1936)

District Subordinate Service Rules

Excise Act (I of 1914)

Land Record Manual.

Land Revenue Act (XVII of 1887)

Laws Act (IV of 1872)

Municipal Act (III of 1911)

Pre-emption Act (I of 1913)

Regulation of Accounts Act (I of 1930)

Relief of Indebtedness Act (VII of 1934)

Sikh Gurudwaras Act (VIII of 1925).

Subordinate Service

Tenancy Act (XVI of 1887)

Village Panchayat Act (III of 1922).

PUNJAB ALIENATION OF LAND ACT (XIII OF 1900) S 2 (3)—Agricultural land—Ten—Presumption from circumstances.

All the facts and the circumstances must be taken into consideration to determine whether land is or is not agricultural.

The

the

A.I.R. 1940 Lah 438.

—S 2 (3)—Land continuously used for brick

within the

or let for

servient to

categories

in the def-

brick-kiln

SHAH v.

R.L. 113=

A.L.J. 1940

—S 3—Denam: sale by an agricu-

favour of an agriculturist—Real vendee, a nor-

rist—Rights of ostensible vendee—Sale,

## PUNJ ALIEN OF LAND ACT (1900), S 3

39 Dig,  
 47  
 ommit

—S 6—Deputy  
 Officer See 1939 Dig, Col 1012 MALAWA MAL v  
 PUNJAB PROVINCIAL GOVERNMENT 186 I C 332=  
 12 R L 385

—S 13—Transaction in its inception for benefit of  
 money lender—Subsequent transactions—Validity

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—S 14—Benami sale by an agr  
 of an agriculturist—Real vendee a  
 Possession of latter when becomes

Act would suggest that it was the existing rights of  
 agriculturists which were to be protected and not neces-  
 sarily rights which might subsequently accrue to them.  
 Any land which has come to an agriculturist or been  
 acquired by him, as distinct from any land which has  
 always been his must therefore be subject to the same

and that even in his hands it is  
 of them but no more. Hence w  
 is not a member of an agricultur  
 gaged his land to another person, who is also a non  
 agriculturist, by an equitable mortgage and later  
 transfers his ownership of that land to a person who  
 is a member of an agricultural tribe, the mortgagee  
 is not deprived by this section of his ordinary

executing Court has to decide what property should be  
 sold to satisfy the decree. In other words, the section  
 is analogous to S 60 Civil Procedure Code which lays  
 down that certain properties shall not be liable to be  
 attached and

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## PUNJ, COL OF GOVT LANDS ACT (1912) S 30.

Where the mortgagor is a statutory agriculturist  
 whose land cannot be sold under S 16 of the Land  
 Alienation Act no decree for sale of the mortgaged land  
 can no doubt, be made against him, but the suit cannot  
 he Court can pass a  
 aring the same to be a  
 and making it payable  
 ault of which it will be  
 (Din Mahomed, J)

RAM PARTAP v SHIB LAL 188 I C 642=  
 13 R L 37=42 P L R 110=A I R 1940 Lah 197

—S 16—Mortgage decree against member of notifi-  
 ed tribe—Sale in execution—Permissibility

The prohibition in S 16 of the Act is absolute and  
 land belonging to a member of a notified tribe cannot be  
 sold even if a decree on the footing of a mortgage has  
 been previously obtained against him (Friede J)

ler passed on an application  
 11 Foll, A I R 1937 Lah  
 Singh J) MD YUSAF  
 190 I C 466=  
 71=A I R 1940 Lah 336

—S 21-A (1)—Power of remand  
 In a case under S 21-A where the Court considers a  
 remand necessary and desirable it is competent to order  
 the same under S 21 A (5) (Dulip Singh J) MD  
 YUSAF ALI v D C HOSHIARPUR  
 190 I C 466=13 R L 171=A I R 1940 Lah 336

PUNJAB COLONIZATION OF GOVERNMENT  
 LEHNA v  
 P L R 358

rown paying  
 each of sale  
 e land See

PUNJAB COLONIZATION OF GOVERNMENT LANDS  
 ACT, SS 24 AND 15 42 P L R 529

—S 21—Applicability—Original tenancies and  
 those ripening into occupancy tenancies See 1939 Dg  
 Col 1013 LEHNA v PATHANA 42 P L R 358

—Ss 24 and 15—Purchaser from Crown paying  
 entire price—Position of—Subsequent breach of sale  
 conditions—Power of Collector to resume land

If a purchaser from the Crown pays the entire pur-  
 chase price and fulfils the terms set forth in the state-  
 ment of conditions he becomes a full proprietor of the

OF THE PUNJAB PROVINCE v HARBHAGWAN  
 42 P L R 529

—S 30—Widow a quivering proprietary rights—If  
 becomes owner of that property—Dissolution of such

da Act a  
 proprietary  
 out of the  
 he owner  
 descend

**PUNJ. COL. OF GOVT. LANDS ACT (1912)**  
S. 36.

as self-acquired property and not as ancestral estate in which she has but a life interest (*Garbett F. C.*)  
**DALLAN v. MOHAMMAD** 19 Lah L T. 11.

S. 36—Collector resuming land purchased from Crown—Suit by purchaser for declaration and injunction—Jurisdiction of Civil Court—Crown Grants A

S. 36 of the Colonization of Government Lands does not bar a suit by a purchaser of land from

to the case, (*Abdul Rashid f.*) G  
**THE PUNJAB PROVINCE v. HAREHAC**

S. 39—Appellate jurisdiction—Limits—Amounts to be decreed beyond jurisdiction—Proper procedure

If the Deputy Commissioner informs the claimant that his claim has been admitted for a certain

been admitted for a certain amount, certificate under S. 31 (2). (*Skemp SINGH v. SOMER NATH.*)

12 R L 534—A I R 1200 1200  
S. 32—Modification of order—Awarding of

186 I C 133—12 R L 534  
S. 41 (3), proviso—Dismissal of application for certificate—Remand by High Court on remand—Certificate granted after remand—Limitation—second appeal—*T. v. S. v. S.*

Where under S. 41 by the District Judge after remand, remanded of the application granted by the District Judge after remand, Held, that as the High Court ordered the rehearing of the application the prior order dismissing the applica-

**PUNJ. DEBTORS' PROTECTION ACT (1936)**  
S. 12.

tion had no existence in the eye of law, that, therefore, the application must be taken to be pending from the date of its dismissal to the date on which it was ultimately granted and that this period should be for an appeal under (*Abdul Rashid, f.*)  
189 I C 636—  
IR 1940 Lah 109

TO CONTEST)  
ut by insolvent's son that been willed to him by

**PUNJAB DEBTORS' PROTECTION ACT (II OF 1936), S. 9—Ancestral land attached before Act—If can**

Under S. 9 there has to be an express charge by mortgage on ancestral land before it can be sold or otherwise disposed of in execution of a decree against a predecessor in interest. Attachment in the lifetime of the predecessor or in interest is not sufficient, as attach-

interpreted in their plain grammatical meaning. Opening part of S. 9 does not make it a condition

synony in. The ed in the "money" Any dis- of the

A I R  
S. 12—Sum given as advance "loan"—Entry as to its receipt proved

## PUNJ DIST. SUB SERVICE RULES. E 11

[illegible]

Mr. F C ) D

PUNJAB  
dated 30th  
restaurant—Collective responsibility See 1939 Dig.  
Col 1016 DUNICHANDR EMPEROR

186 LO 581 = 12 R.L. 421 = 41 Cr LJ S41 =

**PUNJAB LAND RECORD MANUAL, Chap. 3.**  
App F, Para 3 (19) (vi)—*Preparation of map and  
instant of police—Duty of postman—Postman hanging  
some of occurrence et al. help criminal—Liability to dis-*  
*miss.*

quences of his action by the plea that he did actually  
that which it was not his duty to do and as it was not  
his duty he should not be punished (Gardner, FC)  
NEER RAIL EMPLOYER 19 Loh L T 19

**PUNJAB LAND REVENUE ACT (XVII OF 1897), S 15**—*Order of Collector dismissing Zaildar reversed by Commissioner.—Appeal by rival candidate against Commissioner's order—If competent*

If an order of the Collector dismissing a raddar is reversed by the Commissioner the nominee of the Collector to succeed the raddar dismissed by him is not competent to appeal against the order of the Commissioner (Garh F C) SULTAN SINGH v. NARSINGH DAS 19 Lah L T 17

—S. 18—*Refusal of Commissioner to create extra land value—Appeal, if any—Power of Commissioner to rec. under decision.*

The refusal of a Commissioner to accept an application for a license to sell or lease land is interpreted as a denial of an application for a license to sell or lease land. This being the case, the Commissioner is not required to

is open to  
a Commissioner who may so desire to reconsider the  
case at any time (Grayne FC) KHUSHI DIAL r  
EMPEROR 19 Ish L T 7.  
—Ss 15 and 16—Order of Commissioner confirm  
ed by Financial Commissioner—Latter, if can permit  
successor of Commissioner to review his predecessor's  
order—Proper procedure

If an order of a Commissioner has been confirmed by the Financial Commissioner, it is not open to the latter.

## PUNJ. LAND REVENUE ACT (1857). S. 44

—S 16—*Unction preceding—Krisper—Inter-*  
*feren e by Financial Commission*

It is true that the Land Revenue Act gives the Financial Commissioner powers of revision which are not confined by the provisions of S 84 of the Tenancy Act. Nevertheless in deciding whether a case in revision should be entertained or not the principle of law underlying S 84 of the Tenancy Act should not be disregarded. Where in a mutation proceeding two Courts have both decided in favour of the same party, the

Courts. (Garrett, A C) AMIR ALI & AKHTAR IB  
BAS. 19 Feb LT 23

—S 16—*Vatati m—Kcunem*

On revision the Financial Commission over will interfere in a matter of mutation if there has been not only material irregularity but also material injustice (Garhwal F.C.) HARNAM SINGH & DALIP SINGH

—S 16—Order of Collector appointing landward  
—Interference in execution

by a Collector as to the better of two can  
ambardari. But he will interfere if there  
ception both of fact and of policy

—b 16—Right to app'y—Person appointed law  
for inf'or of one dismissed—Right to file version  
against order of reinstatement of dismissed landlord

"If a Collector appoints a person as lambardar in the place of one who is dismissed he should state in the order of appointment that the appointment is temporary subject to the result of any appeal or revision proceedings taken on the order of dismissal. His failure to do so does not however give the person appointed as lambardar any right to file a revision petition against the order of reinstatement of the dismissed lambardar (Braye v F. C. HARRIS SINGH v UJAGAR SINGH

PUNJ. LAND REVENUE ACT (1887) S 41

PUNJ. MUNICIPAL ACT (1911), S. 195

disallowed.

As S 115 empowers Revenue Officer to disallow

*med. J.J.* DOST MAHOMED & HABIB  
42 P.L.R. 759—A.I.R. 1  
—Ss 115 and 158—Collector disallowed  
jurisdiction of Civil Court

Jurisdiction of Civil Court

S 115 of the Act does not give the Collector any power

the Civil  
Committee has  
powers.

Ss. 106 and 110—Collector disallowed partition  
—Jurisdiction of Civil Court See PUNJAB LAND  
REVENUE ACT, Ss 115 AND 158.

A.I.R. 1940 Lah 428

—S. 114—Notice—Option of ordering demolition  
or repairs—If vests with Committee.

It is incumbent upon the Municipal Committee to

matter which is within the jurisdiction of the Federal  
Legislature alone and cannot therefore by virtue of

—S. 175—Applicability

S. 175 of the Act does not apply only if

12 R.L. 483

the committee has, therefore, no power to impose a tax  
on salt (*Din Mahomed, J.*) DAULAT KHAN &  
MUNICIPAL COMMITTEE, LAHORE.

42 P.L.R. 780

—S. 62 (12)—Legality of tax—If can be ques-  
tioned.

S. 62 (12) of the Municipal Act only lays down that a  
tax under the Act and whether  
imposed.

demolition—Power of committee to issue

Where the Municipal Committee leaves out a portion  
of the public street and allows the lessee to build a cha-  
batra thereon the site under the chabutra ceases to be a  
portion of the public street and the Municipal Commit-  
tee has no power to issue notice under S. 175 for  
demolishing the chabutra (*Khude, J.*) MUNICIPAL  
COMMITTEE JAGADHAI & JOTI PERSHAD.

190 I.C. 531—13 R.L. 179—42 P.L.R.

A.I.R.

—S. 195—Building erected  
Order for demolition—When proper.



## PUNJ MUNICIPAL ACT (1911), S 195-A

It is true that power is vested in the Municipal Com

J) BISHAMBAR SAHAI v MUNICIPAL COMMITTEE,  
DELHI 189 I.C. 151-13 R.L. 69=42 P.L.R. 221=  
A.I.R. 1940 Lah 185

## —S 195 A—Contents of notice

A notice under S 195 A of the Municipal Act is not bad if it does not specify in detail how the sanction has been contravened. There is nothing in the language of that section which requires the notice to state any more than that the sanction has been contravened (*Blacker, J*) SURAIN SINGH v EMPEROR

I.L.R. (1940) Lah 237-42 P.L.R. 102

## —S 195 A—Delivery of notice—Meaning of

S 195 A of the Municipal Act says that the notice should be 'delivered' to the owner, and not that it should be 'served' on him. The words 'service' or 'served' are technical terms implying a definite process of the law and where those terms are used that process has to be carried out. The words 'delivered to' do not appear to mean or to be intended to mean the same as 'served upon'. They are words of much wider meaning (*Blacker, J*) SURAIN SINGH v EMPEROR.

I.L.R. (1940) Lah 237-42 P.L.R.

## —S 195 A—Notice signed for Executive Of

—Regularity—Presumption

## —S. 225—Committee

KOT MUNICIPALITY

## PUNJ PRE EMPTION ACT (1913), S. 15

1019 ADMINISTRATOR, LAHORE MUNICIPALITY v  
12 R.L. 376  
MISSIONER—R-

says that the  
infined to sus  
the Municipal  
solation itself  
operates, has  
of suspending  
'ohammad, J)  
LITY  
42 P.L.R. 202

## —S 232—Resolution of Committee acted upon—Subsequent suspension—Legality

Under S 232 of the Punjab Municipal Act the Commissioner or the Deputy Commissioner is authorised to suspend the execution of any resolution or order of a Committee and not the resolution or the order itself. If once such resolution or order has been acted upon, it cannot be suspended. In other words the order of suspension should be made before the resolution or order is executed and not after (*Din Mahomed, J*) MOHOMED SHAFI v SIALPOT MUNICIPALITY

42 P.L.R. 550=A.I.R. 1940 Lah 451

—S 238—Period of supersession—Limit for—Administrator's tenure of office. See 1939 Dig, Col 1020 MAHOMED ARIF v ADMINISTRATOR, LAHORE MUNICIPALITY

I.L.R. (1940) Lah 14  
—S 238 (2) (b)—Powers of administrator. See 1939 Dig, Col 1020 MAHOMED ARIF v ADMINISTRATOR, LAHORE MUNICIPALITY.

I.L.R. (1940) Lah 14.

See 1939 Dig, Col 1020  
I.L.R. (1939) Lah 500  
No 1718 K dated 14th  
See 1939 Dig Col  
IER KHAN  
1h 88=186 I.C. 450  
12 R.L. 397  
—Sale of muqarradars

sale  
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cific  
e of  
MIR  
17=

A.I.R. 1940 Lah 17

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of  
falso-

## PUNJ FREE EMPTION ACT (1913), S 15

—S 15(c)—*Owners of estate—Hindu family whose names are not papers*

The very constitution of a joint li-  
tes that every member has an equal  
members and it is immaterial whe  
recorded or not in the revenue paper

## PUNJ SIKH GURDWARAS ACT (1925), S 5

A.I.R. 1940 Lah 340

PUNJAB REGULATION OF ACCOUNTS ACT  
(I OF 1930) S 2 (9)—*Definition of trade—Scope*

The restrictive definition of trade given in the Regu-  
lation of Accounts Act can have  
matters which do not fall within the  
Act (*Tek Chand and Abdul Kas*  
*RAM v MIAN UMAR ALI*

13 E L 124

A I I

## PUNJAB RELIEF OF INDEB

(VII OF 1934) S 5—*Mortgage by guarantor of minor  
with sanction of Court—Reduction of*

Act in respect of a transaction such as usufructuary  
mortgage which is not a "debt" and makes a declaration  
that it has been discharged for all purposes and all  
occasions it clearly does so in excess of its jurisdiction,  
and the Civil Court is not debarred from entertaining

—Ss 21 and 13 (2)—*Order of Board under S 13  
Court*

order declaring a  
Punjab Relief of  
of debts is not  
ce with a notice

Punjab Relief of Indebtedness Act the Court has power  
to reopen the transaction although  
created before the Usurious Loan  
(*Stamp, J*) *JIVA I AL v BABU*  
189 I C 590 = 13 E L

In order to decide whether an application before the

—S 7—*Usufructuary mortg*

A usufructuary mortgage does not create a debt  
and a usufructuary mortgagor is not a debtor within  
the meaning of S 7 of the Punjab Relief of Indebtedness  
Act. The essence of a debt is the liability of the

Lah 780 Appr (*Tek Chand and Beckett, JJ*)  
SHANKAR DASS & LADHA KAM GANESH DAS.

42 P L E 598 = A.I.R. 1940 Lah 447.

PUNJAB SIKH GURDWARAS ACT (VII OF



**PUNJ. TENANCY ACT (1887), S. 59**

notice was also unsuccessful he is precluded by S. 50 A of the Civil Court to

—Ss 59 (3) and 60—*Alienation by widow—If void or voidable—Right of reversioners to contest alienation*

the widow have a right to get such an alienation declared to be void and therefore not binding on them independently of the question of valid necessity and consideration for the alienation on which the reversioners can usually challenge an alienation under custom S. 60

the provisions of Ss 52 to 59. A general provision to the

1917, Overruling *Jick Chanda, Ali Lakh Singh v. Hassu*

42 P L R 538—A I R

—S. 77—*Civil suit—When*

S. 77 of the Punjab Tenancy Act operates as a bar to a civil suit only when the relationship of landlord and tenant is admitted but the nature of the tenure is disputed (*Bhinder, J.*) *INTIZAMIA COMMITTEE GURDWARA RAMSAR MANJI SAHIB v. MANI RAM* 189 I C 419—13 R L 79—42 P L R A I R 1940 L

—S. 84—*Ground for revision*

The Financial Commissioner will only act in when the conditions defined in S. 115 C. P. Code been fulfilled (*et*) when there has been some jurisdiction and also when there has been injustice (*Garbett, F. C.*) *GANESH DAS KISHAN* 19 Lah L T 18

—S. 84—*Ground for revision—Misconception of facts*

A Court which acts under a complete misconception of the facts of a case materially fails to exercise its jurisdiction and a revision (*Garbett, F. C.*) *RAJ*

—S. 99—*Est jurisdiction—Pro*

Where both the parties have agreed that they have authority to hear a case the proper course is to make a reference to the High Court under S. 99 of the Punjab Tenancy Act (*Garbett F. C.*) *JAGANNATH v. SHER JANG* 19 Lah L T 47

**PUNJAB VILLAGE PANCHAYAT ACT (III OF 1922) S. 39 (2)**—*Suit to determine whether resolution of panchayat was ultra vires—Jurisdiction of Civil Court* See 1939 Dig. Col 1026 *RAGHUNATH SAHAI* Y. D. 1940—69

**RAILWAYS ACT (1890), S. 77**

*v. PANCHAYAT, VILLAGE SAHSAI.*

186 I C 377—  
12 R L 392.

1939 Dig. Col 1027 *MEGHJI HIRJEE & Co v. BENGAL NAGPUR RAILWAY CO., LTD.* 185 I C 211—12 R N 145

h the powers of a in Council or the See 1939 Dig. Col BENGAL NAGPUR 241—12 R N 145 les made under— R. 23—*Station master charging wrong rates—Demand and recovery of proper rate—Party paying if can sue to recover*

Though a station master is an agent of the Railway, and it is within his authority to agree to carry rates to a wrong rate, S. 23 of the Coaching passengers that the right to correct any incorrectly made and to recover under charges from whatever causes arising subse demanded ger, the forced

*Singh J.* *BHAGWATI PRASAD v. B. B. & C. I. Ry.* I L R (1940) All 212—188 I C 400—13 E A 17—1940 A W R (H C) 106—1940 A L J 122—A I R 1940 All 235.

*Negligence if may amount to*

Misconduct is something opposed to accident or negligence it is the intentional doing of something which the doer knows to be wrong and which he does recklessly not caring what the result may be Where the fault

—S. 77—*Limitation—Starting point* See 1939 Dig. Col 1023 *MOTILAL RAGHUBAR DAVAL v. BOMBAY PORT TRUST RAILWAY* 186 I C 801—12 E A 416.

—S. 77—*Scope of—Overcharge—Meaning of.* See 1939 Dig. Col 1023 *MEGHJI HIRJEE & BENGAL NAGPUR RAILWAY CO. LTD.* 185 I C 241—

## RAILWAYS ACT (1890), S 77.

—S 77—Section, if mandatory—Notice in anticipation, if contemplated—Object of requirement of notice See 1939 Dig, Col 1028 *MEGHJI HIRJEE & CO v BENGAL NAGPUR RAILWAY CO, LTD* 185 I C 241=12 R N 145

—S 80—Goods damaged in transit—Suit against two companies for damages—Proof required See 1939 Dig Col 1028 *BENGAL NAGPUR RAILWAY CO, LTD v BALABUX* 189 I C 56=13 R C 55

cannot impose on a railway company any liability to pay a tax when such liability is not imposed by the taxing statute. But in the absence of such a notification, the railway company will be relieved from paying a tax which is imposed by the taxing statute (*Henderson and Akram JJ*) *CORPORATION OF CALCUTTA v BENGAL DOARS RAILWAY CO* I L R (1910) 1 Cal 585=41 C W N 648= A L R 1940 Cal 531

**RANBIR PENAL CODE, Ss 149/352—Conviction under—Maintainability—Action not taken against assailants**

A conviction of the accused persons under S 149/352 of the Ranbir Penal Code is not maintainable, when no action is taken against the actual assailants (*Abdul Qayoom C J*) *RAM CHAND v STATE* 42 P L R J & K 91

tion

In a case of murder it is for the existence of grave and sudden burden does not lie on the prose it. It is for the accused to explain which the injury had been caused (*Abdul Qayoom, C J and Wazir*) *STATE*

—S 302—Examination Court—Necessity for—Doctor's finding Magistrate not satisfactory

Where the evidence of the doctor before the commit

of the doctor is com

**RANBIR PENAL CODE, S 301**

tradicted by another doctor examined in the Sessions Court (*Abdul Qayoom, C J and Kichlu J*) *IAHAR SINGH v STATE* 42 P L R J & K 89

—S 302—Offence under—Absence of motive—Effect of

In a case of murder absence or inadequacy of motive is immaterial if there is cogent evidence establishing that the crime in fact has been committed (*Abdul Qayoom C J and Wazir, J*) *MIRQO KHAN v*

—S 302—Sentence—Wife's death caused by husband under provocation

If a husband causes the death of his wife under provocation given to him by her abusing and kicking him out of the bed when he goes to her for sexual intercourse, a sentence of death is not justified, but a sentence of life imprisonment would be a suitable sentence (*Abdul Qayoom, C J*) *IBRAHIM v STATE* 42 P L R J & K 155

—S 304—Offence under—Attack with dangerous weapon on vital part of body

If a person causes the death of another by attacking him with a dangerous weapon on a vital part of the body, he must know that the injury which he is inflicting is likely to cause death and he is therefore, liable to be convicted under S 304 of the Ranbir Penal Code (*Abdul Qayoom C J and Kichlu J*) *ALI v STATE* 42 P L R J & K 147

was likely to result from those injuries the case would fall under S 304 and not under S 325 of the Ranbir Penal Code (*Abdul Qayoom, C J and Kichlu J*) *RUSTAM MIR v STATE* 42 P L R J & K 288

—S 301, Part I—Conviction under—Accused

that the accused impulse in the convicted under

(*Abdul Qayoom, C J and Kichlu J*) *MST JANI v* 42 P L R J & K 247.

Conviction under—When

ed may not have intended to have known that the ing on him were likely to cause his death, it is not a conviction under S 304,

# RANBUR PENAL CODE S 331.

# RECORD-OF-RIGHTS

THE EXPRESSION ATTACHED TO S 331, Code, clearly provides that Ss 334 and to the same provisos as except 1 of S 304 therefore, no application where provocation anything done in obedience to the law or servant in the lawful exercise of the powers of such public servant (*Abdul Qayoom, C J and Wazir J*) STATE v ROSHANLAL 42 P L R J & K 202

—S 335—Ingredient of offence  
The essential ingredient of the offence under S 335 of the Ranbur Penal Code is the existence of grave and sudden provocation (*Abdul Qayoom, C J*) QADIR WANI v STATE. 42 P L R J & K 162

—Ss 363 and 376—Case under—Consent of girl of 13 years—Effect of

In a case under Ss 363 and 376 of the Ranbur Penal Code, where the girl was not

—S 363—Consent of minor girl—If

In the case of an offence of kidnapping from lawful guardianship the question of consent on her part does not arise as a minor's consent

14 years—If material  
Under S 363 of the Ranbur Penal Code, where the girl was not

SHAH v STATE 42 P L R J & K 185

—S 376—Offence under—Proof—Delay in report

charged under

A woman who is said to have been enticed away by another person cannot be charged under S 498 of Ranbur Penal Code and can only be charged for abetment under Ss 498/109 (*Abdul Qayoom, C J*) MST. BARKAT BIBI v MOHAMMAD DIN 42 P L R J & K 82

BANGCOON INSOLVENCY ACT [INCLUDED IN PRESIDENCY TOWNS INSOLVENCY ACT]

RECEIVER

See also (1) C P CODE O 40

FACTS—RECEIVER

suit—Leave to defend money application by receiver—Practitioner to creditor—If necessary—Opportunity to obtain money necessary

Indian and English practice the original as well as the renewed applications will normally be made to the Judge who has control of and is familiar with the administration of the estate. The Judge may on such applications require the receiver to place before him an opinion of counsel in any matter of complexity. In respect of the costs of and incidental to obtaining such opinion, the receiver will be indemnified out of the estate (*Ameer Ali J*) SYED ABBAS ALI v ABID JAFHAN BEGUM ILR (1910) 2 Cal 208

—Powers of—Dealing with property—Sanction of Court—Necessity—Transaction without leave—Validity—Right to challenge

Per Chatterji J—A receiver cannot effectively deal

not challenge it  
Court's sanction.  
PRASAD SINGH  
INDON  
1910 Pat 518

and his functions  
Chatterji, C J and  
AN CHETTYAR

189 IC 177=13 R.E. 23=A.I.R. 1910 Rang. 151.

RECORD OF RIGHTS—Entry in—Presumption of correctness—Inconsistent entries in different Effect of—If one rebutted by the other

Where there are two inconsistent entries in different columns in the record of rights the effect of correctness of one entry stands

dictated and a copy of the judgment has to be submitted forthwith to the High Court (*Abdul Qayoom, C J*) GHAZAN v STATE 42 P L R J & K 178

—S 411—Possession of accused—Stolen property recovered from compound of his house

Where stolen property is recovered at the instance of the accused from the compound of his own house, he must be considered to have been in possession of it.

RECORD OF RIGHTS

entry in a different column  
*Mahomed Noor, J* SANKAR L  
SUNDAR DEB 191 IO  
1940 P W N 827=  
—Entries in—Presumption—Rebuttal—Assertion

BHOLA NATH DUTTA v NARAIN KUMARI DASSI  
72 CLJ 12=AIR 1940 Cal 588  
—Notices by Deputy Collector referring certain  
plot as wakf—If instruments of title

—Preparation—Enquiry—Duty of Revenue Officer  
See 1939 Dig Col 1033 SECRETARY OF STATE v  
DISTRICT BOARD, RANGPUR 185 IO 454=  
12 RC 373

—Presumption of—Plea of incorrectness—  
Onus  
An entry in the survey Record of Rights carries  
with it a statutory presumption of correctness  
and the onus is upon the person, who alleges that  
the entry is incorrect to prove by evidence that  
it is so (*Mohamad Noor and Manohar Lall, JJ*)  
SURJA MOHAN v RAMA PRASAD  
189 IC 745=13 RP 134  
AIR

REGISTRATION ACT (XVI) OF  
Benefits to arise out of land—To  
vehicles in public road—If immovab  
REGISTRATION ACT, S 17(1)(4) &  
—Sa 17 and 49—Compromise da  
settlement—Right to remain in posse  
for life, conferred—If compulsorily  
Where a petition of compromise in  
family settlement and it did no more

BAHADUR SINGH 1940 O A 1090=

registration See 1939 Dg, Col 1033 RAMAPPA v

—S 17—Equitable mortgage—Letter accompanying  
deposit of title deeds on date of loan—If constitutes  
the bargain between the parties—Registration—Neces  
sity  
Five or six days before the advance of a loan, the  
debtor handed over the title deeds to the creditor in

REGISTRATION ACT (1908), S 17

... routine them on the under  
deeds proved to be in order,  
anced on equitable mortgage  
e deeds being approved, the  
execution of a promissory note, the deposit of the title  
deeds and the payment of a letter of deposit, all took  
place. The letter was advanced. The letter  
reciting a promise to you this  
was received in cash from you  
in part with you as security house  
the original title deeds relating  
the time when I discharge the  
take back this letter as well as  
To this effect I have executed  
this collateral letter with consent

Held, that it might be taken that the signing of  
the promissory note, and the deposit of title deeds took place  
before the letter was signed in actual point of time, the

the right of the mortgagee in the property and not merely  
a record of what had transpired and hence it was com  
pulsorily registrable under S 17 of the Registration Act  
(*Leach CJ and Kunkri Raman, J*) VISALAKSHI  
AMMAL v KRISHNAVENI AMMAL

1940 M W N 122=51 L W 213=  
AIR 1940 Mad 671=(1940, 1 M L J 561  
—S 17—Landlord and tenant—Agreement by  
tenant to pay rent in money for crops raised by him  
varying rent payable under patta—Registration—  
Necessity

51 L W 366=AIR 1940 Mad, 379=  
(1940) 1 M L J 391 (F B)

—(as amended in 1929) S 17—Scope—Docu  
ment executed before amendment and not requiring to  
be registered then—If affected

—Amended in 1929,  
to be reg stered  
it was executed  
by (*Agarwala*  
DAS v KASHI  
=187 IC 353=

12 RP 698=AIR 1940 Pat 497  
and (2) (v)—Applicability—  
share in inheritance to be got by  
deed in return for financial help  
Contract Act, S 23—Extortionate  
Award postponing partition and  
giving sum of money annually to executant till parti  
tion to be adjusted at distribution—Transferability—  
T P Act S 6 (dd)

The defendant who inherited properties from his father  
along with his two step-brothers and who was a man  
of vacillating intellect was persuaded by the plaintiff to

## REGISTRATION ACT (1908), S. 17.

enter into an agreement with him on 5.10.1930, under

to give the plaintiff half of the property which he might get either by a private settlement or by the decision

as the first agreement. The very next day the plaintiff lodged this agreement for registration. The Registrar who refused to register the defendant was of the opinion that the agreement was made on 13.10.1930, all disputes between the brothers were referred to a reference was heard and on 20.1.1931, filed in Court and on 24.1.1931. The plaintiff arbitration and it was not. The award after stating a man of vacillating intellect not in a proper state of health and did not understand either the extent of his estate or how to take care of it, decided that the family property should remain a trust and was to be divided amongst the five sons.

(Rs 75 a month) allowed to the plaintiff.

*Held*, (1) that the two agreements in favour of the plaintiff did not create or declare an immovable property, either in the present or in the future, and were covered not by S. 17 (1) of the Registration Act, and did not therefore require registration; (2) that the agreements were not obnoxious to S. 6 (dd), T. P. Act, as the money which was being paid to the defendant was not maintenance but a reservation out of the income; (3) that the suit was substantially a suit for specific performance, and as there was a demand and a denial of the right, there was a cause of action; (4) that, however, the suit must fail because the agreements could only be regarded as an extortionate and unconscionable bargain. (*Broomfield and Indarnarayam, JJ.*) BHARILAL NATHALAL v. BHARILAL BANLAL, 188 I.O. 217 = 12 E.B. 502 = 42 Bom.L.R. 165 = A.I.R. 1940 Bom. 143

—S. 17 (1) (b)—Applicability—Award—Construction.

## REGISTRATION ACT (1908), S. 17.

therefore did not require registration under the Act. (*Uttam of Killoren*) UPENDRA NATH BOSE, 191 I.O. 7 = 1940 M.W.N. 1122 = 1940 O.W.N. 1103 = 21 Pat.L.T. 935 = 52 L.W. 800 = 1940 P.W.N. 888 = 1940 O.A. 881 = 1940 A.W.R. (P.C.) 147 = A.I.R. 1940 P.C. 222 (P.C.).

(b)—Arbitration without intervention of the court—Dividing properties of Hindu joint owners—Registration—Necessity—Application to the award—Admissibility of award with

—S. 17 (1) (b)—Leases from Government of right to collect toll on public road—Assignment of rights—Registration—Necessity—Immovable property.

—Ss 17 (1) (b) and (2) (v) and 49—Memorandum or agreement in respect of house in suit as well as other houses—Provision for obtaining compromise decree later on in terms of agreement—Registration—Necessity—Admissibility for purpose of obtaining decree in terms.

A memorandum or agreement requires registration if the parties intend it to be a declaration of rights and if it is so worded, but a memorandum drawn up for the purpose of obtaining another document to declare rights for example, a compromise decree to be obtained later on in terms of the agreement—does not require registration, as it does not fall under S. 17 (1) (b) of the Registration Act. It can therefore be received in evidence though

such purports to be an assignment of the rights of the lessee registrable under S. 17 (*Marklin and Wasthuji v. GANABISAN*, 42 Bom.L.R. 750 = A.I.R. 1940 Bom. 369).



## REGISTRATION ACT (1908), S 17.

—S 17 (1) (b)—*Mortgage by deposit of title deeds*  
—*Contemporaneous memorandum—If requires registration*

A person who had borrowed money created an equitable mortgage by deposit of title deeds. In the afternoon of the same day the mortgagor executed a memorandum which was to the following effect: We confirm having already deposited with you the title deeds of our following property in Karachi as per particulars given hereunder as security by way of mortgage for the sum of Rs 11,500 (eleven thousand and five hundred) advanced to us by way of overdraft and for which we have handed you a demand promissory note and all interest thereon and all costs and charges and sums that may be incurred or spent by you.

*Held*, that the memorandum executed on the afternoon must be taken as executed contemporaneously with the deposit of title deeds. The memorandum was not an integral part of the transaction or an operative instrument. It was a mere memorandum relating to the deposit of title deeds and hence did not require registration (*Lobo, J*). **WALI RAHMOO In re**

**A I R 1940 Sind 201**

—S 17 (1) (b)—*Mortgage—Different deeds securing amount below Rs 100—Each deed containing clause that mortgagor would redeem his land on paying up entire money on other mortgage deeds—Registration of deed—If necessary*

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registration under S 17. A person executed at one and

thirteen mortgage deeds, which have been executed to day, in the month of Jeth to the mortgagee I would get my land redeemed from the mortgagee and I would not put forward any objection in that behalf."

*Held*, that the clause in question did not make each deed, by itself an instrument creating a right of the

to the sum of Rs 100 to be repaid to the mortgagee.

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## REGISTRATION ACT (1908), S 17.

—S 17 (1) (b)—*Mortgage—Equitable mortgage—List of documents deposited—Need for registration*

Where an equitable mortgage is created by a deposit of title deeds a mere list of the documents deposited which is handed to the mortgagee does not require registration. The mere fact that it is stated in the heading of the list that the property is unencumbered is not sufficient to turn it into a document embodying the agreement between the parties (*Rhida, J*). **PUNJAB NATIONAL BANK, LTD v OFFICIAL RECEIVER KARNAL**  
**188 I C 833=13 E L 50=**  
**42 P L R 29=A I R 1940 Lah. 166**

—S 17 (1) (b)—*Mortgage—Equitable mortgage—Memorandum relating to deposit of title deeds—Need for registration*

An equitable mortgage is created by the deposit of title deeds. It does not require to be reduced to writing but a memorandum or other writing is usually passed either contemporaneously with the deposit of the title deeds or subsequently. It is in each case a question of fact, as to whether the writing itself contains the bargain between the parties or whether the mortgage had been completed by the deposit of title deeds and the advance of money on such deposit and the writing is merely evidence of an already completed transaction. In the former case, the writing falls within S 17 of the Registration Act and if unregistered is inadmissible. In the latter case there is no bar to its being received in evidence (*Tek Chand and Abdul Rashid, J*). **RAM**

**I L R (1939) Kar (P C) 287 =**  
**1940 P W N 1 (P C)**

1) (b)—Need for registration of document—If material  
**R L SONI v PHAYAGVI**  
**188 I C 228=12 E R 372**

2) (x1)—Scope—Receipt by mortgagee—Mortgagee agreeing to accept less than due amount—Receipt reciting agreement to waive balance amounting to over Rs 100—Registration—Necessity—Non registration—Effect on admissibility

There is obviously a distinction between a receipt for money and a relinquishment of a claim by a creditor. Where a receipt does not purport to extinguish a mort-

claim and waive the balance of the sum due out of

**J J. ADHUN: AN LANE JIAL AN NO**  
**188 I C 75=12 E L 502=A I R 1940 Lah 98**

**NATIONAL BANK, LTD v OFFICIAL RECEIVER KARNAL**  
**188 I C 833=13 E L 50=**  
**42 P L R 29=A I R 1940 Lah 166**

**52 L W 401**  
—S 17 (1) (c) and (2) (v)—*Applicability—Agreement for sale of land—Provision for delict cr*

## REGISTRATION ACT (1908), S. 17.

of land on payment of Rs 200 by vendee to vendor out of sale price of Rs 300—Vendee to hold land as security for Rs 200 until payment of balance—Sale deed presented for registration

Effect of

though the agreement also contains a provision relating to the execution of a further document such as a sale deed

ment was not registered

Held, that in favour of the charge was integral part of

formance even to prove an agreement to execute a further document such as a sale deed, by reason of S. 17 (1) (d) of the Act

—S

compulsory registration—Decree confirming sale with varying rent by making tenant liable for Government taxes—If requires registration

A decree which confirms a *malguzari* lease, which did not require registration, but varies the payable by making the lessee pay revenue and local fund tax and whatever imposed in future if the same be due cannot be read as creating a new lease registrable under S. 17 (1) (d) of the Act (Kania, J) RAMRAO NILKANTH SARASWATI SWAMI I L R (1940) Bom 480

## REGISTRATION ACT (1908), S. 17

as the rate of rent is one of the terms of the lease. (A. N. Sen, J) ATUL KISHNA BOSE v ZAHED MONDAL 72 C.L.J. 132 = 45 C.W.N. 129

—S 17 (1) (d)—Lease for one year with option of renewal

tenant to continue to live thereafter as a lease for a term not exceeding one year when it does not (Md and Baid, J.J.) 1901 C 493 = 42 P L R 442 = R 1940 Lah. 409 year fixing annual rent—Need for registration. See 1939 Dig., Col 1036 MENGH RAJ v. NAND LAL 186 I C 106 = 12 R L 363.

—S 17 (1) (d)—Lease requiring yearly rent

ments—Charge created on immovable property—Decree-holder to recover rent charged—Assignment—Validity—Construction

by annual instalment per cent per annum The decree created a charge on the property in favour of the decree-holder in the event of the default of the tenant in the payment of the rent of the charge had property, the amount of the

amount has been placed on the property as above" The decree was transferred to the appellant who filed a *darkhast* to recover the 2nd and 3rd instalments. The decree was not a *darkhast* but a *malguzari* lease.

prior to the assignment or simultaneously with the assignment

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## REGISTRATION ACT (1908), S 17.

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## REGISTRATION ACT (1908), S 28

—S 17 (2) (v)—Scope—Agreement of sale of land creating charge—Registration—Necessity—Clause providing for execution of sale deed on payment of balance of sale price—Effect See REGISTRATION ACT, S 17 (1) (c) AND (2) (v) 1939 P.W.N 880

—(as amended in 1929), S 17 (2) (vi)—Applicability—Arbitration without intervention of Court—Award creating charge on immovable property mentioned therein—Award filed and made decree of Court—Registration—Necessity—Objection on ground of non-registration in execution—Maintainability—Stranger to award—Right to raise objection—Executing Court—Powers of

the Court has to pronounce indorsement and pass a decree which must be with the award. When a charge the award on the immovable property pertains to the arbitration and award the award it cannot be said that the

the decree but must take it as it stands. Even a

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17 (2) (xi)—Receipt for payment of entire mortgage-money—Need for registration

A receipt for payment of money due under a mortgage does not require registration unless it expressly purports to extinguish the mortgage, although the entire money due under the mortgage is paid at the time of the execution of the receipt. (*Abdul Rashid, J*) *MANGLU v DEV DATT* 42 P L R 27.

—S 17 (2) (xi)—Receipt reciting that possession is restored to mortgagor—Need for registration

The essence of redemption consists in either the cancellation and return of the mortgage deed or where the mortgage is with possession, in the restoration of possession of the mortgaged property to the mortgagor after the mortgage-money has been paid. Where a receipt recites that the balance of the mortgage money

ANDRADIP NARAIN SINGH  
S=6 B E 485=187 IO 522=  
P 603=A I R 1940 Pat 504

75—Document presented after  
—Validity of registration See  
MAHOMED YAHYA ALI SHAH  
42 P L R 267

—S 28—Fraud on registration—Mortgage deed  
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## REGISTRATION ACT (1908). S 28

that the registration of the deed of mortgage in the district in which this land alone is situate is invalid (*Harris, C. J* and *Alamdar Lall J*) RAMNANDAN PRASAD NARAYAN <sup>1911</sup> - <sup>1912</sup> CHANDRANARAYAN SINGH 10 Pat

—S 28—Invalid registration—Plea by party to fraud on registration law—Maintainability

A mortgage defendant is not precluded from pleading that the registration of the mortgage deed sued on is invalid under S 28 of the Registration Act as being a fraud on registration on the ground that he is a party to the fraud on the registration law (*Harris, C J* and *Mamohar Lall, J*) KAMNANDAN PRASAD VARAYAN SINGH v CHANDRADIP NARAIN SINGH  
19 Pat. 578 = 8 B.L. 485 = 187 I.O. 522 =  
12 E.P. 603 = A.I.R. 1940 Pat. 501

—S 30 (1)—Discretion under—Exercise of—Con-  
sideration—Wrong registration—Re ref. . .  
1939 Dig., Col 1039 SUGANMAL v. UN . .

12 E N 275=AIR

—S 32—Award of arbitrator signed  
Parties, if can present it for registration

Where an award is written on the mere fact that the parties sign the original nature of the document can present it for registration executants of the document and cannot therefore be the

*ref presentation*

self made an endorsement on the deed that she had presented it for registration

*Held* that the sale was not invalid on account of a defect in its registration.

## REGISTRATION ACT (1908), S 49.

—S 33 (1) (c)—Execution by pardanashui lady—Magistrate present, but execution behind the purdah—If amounts to execution "before" Magistrate

.. it is found that a pardanashin lady had  
a power of attorney while the Magis-  
s present and the lady was behind the  
purdah and that thereafter the Magistrate made  
his endorsement and the lady once again signed  
her name below the endorsement, the execution  
amounts to execution 'before' the Magistrate in  
accordance with S 33 (1) (c) of the Registra-  
tion Act (*Bennet and Verma, II*) SULTAN  
AHAMAD v GOHAR BEGAM 186 I.C. 505=  
12 RA 400=1939 A.L.J. 1151=  
1939 A.W.R. (H.C.) 878=AIR 1940 ALJ 108

—Ba 34 and 35—Admission of execution—Failure of representatives of deceased executant to raise point of

they have no grounds to deny execution (I homa,  
A WE (CO) 284=  
= 1940 O LE 373=  
666 = 13 E O 10=  
A I R 1940 Omdh 318.

Q. 4. DE AND 27.—Deed presented within four  
Representatives of deceased  
that time—Validity of

the executant of a deed of gift, a deed is presented for registration by the donee with a delay of more than the date of execution, the failure to register the deed by the representatives of the donee is not a denial of execution is a ground for objection. The Sub-Registrar's objection does not apply, and the action of the Sub-Registrar in registering the document cannot be deemed invalid when the only objection is that there was a defect in procedure. (Thomas, C. J.)

—S 32—Presentation—Validity—Conditions—  
Presence of obligor—Sufficiency

A Ren star has no jurisdiction to register a document

—S 49  
for future obtaining of compromise decree in respect of  
house in suit and other houses—Admissibility without  
Ss 17 (1) (d), (2)

12 R.L. 363  
of sale of land  
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REGISTRATION  
39 P.W.N. 880  
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de suit to set

## REGISTRATION ACT (1908) S 49

A decree based on an award which is compulsorily registrable but not registered cannot be set aside on the ground of want of registration under S 49 of the Registration Act in an independent suit by a stranger to the decree. There is no warrant for saying that if any inadmissible evidence is admitted and a decree is passed the same can be challenged in another suit by any party (*Kania and Waisodew JJ*) ARVI CO OPERATIVE CREDIT SOCIETY LTD v DHONDIRAM NAVALCHAND I LR (1940) Bom 526 = 190 LC 606 = 42 Bom LR 486 = AIR 1940 Bom 289

—S 49—Scope—Receipt for mortgage money reciting agreement to relinquish portion of claim exceeding Rs 100—Admissibility without registration See REGISTRATION ACT S 17 (1) (b) AND (2) (a) 1910 MWN 895

—S 49—Unregistered deed of exchange—Effect on title

S 49 of the Registration Act prevents an unregistered deed of exchange of immovable property from having any effect and the title remains in the transferor (*Monroe J*) BABU v DALIP SINGH 42 PLR 291 = AIR 1940 Lab 311

—S 49—Unregistered kabuliat or patta—Admissibility

The terms of a tenancy cannot be determined by looking at an unregistered kabuliat or patta (*Mohamad Noor and Manolar Lall JJ*) SURJA MOHAN v RAMA PRASAD 189 IC 745 = 13 RP 134 = 6 BR 860 = AIR 1940 Pat 37

—S 49—Unregistered mortgage bond—Proof of personal covenant—Admissibility

An unregistered bond creating a simple mortgage is admissible in evidence to prove the personal covenant

—S 49—Unregistered patta—Admissibility to establish nature of possession

A person relying on an unregistered patta who is admittedly in possession is entitled to refer to the unregistered patta for the purpose of explaining the nature of his possession e.g. that he was let into possession as a tenant of the land in suit (*Avarwala J*) KUER RAI v BABURAM KUER 187 IC 583 = 12 RP 619 = 6 BR 502 = AIR 1940 Pat 498

—S 49—Unregistered sale—Use to which it can be put

An unregistered sale though ineffective to pass title may nevertheless be used to explain the nature of possession taken under it (*Stone CJ and Bose JJ*)

Where some years after the execution of a mortgage a registered agreement to sell the property to the mortgagee was executed but the sale deed in pursuance of the agreement was not registered as it could not have been validly registered at the office where the agreement to sell was registered, it was held that the agreement

## RELIGIOUS ENDOWMENT

—(as amended in 1929) S 49, proviso—Scope—Retrospective effect

The proviso to S 49 of the Registration Act, added by the amending Act of 1929 is necessarily retrospective. It is a rule of evidence and normally as it does not create or defeat substantive rights, according to the recognised canons of construction it should be accepted as retrospective (*Kania and Waisodew JJ*) MANILAL MACANLAL v BAI CHAMPA 189 IC 106 = 13 BR 41 = 42 Bom LR 382 = AIR 1940 Bom 193

—(as amended in 1929), S 49, Proviso—Scope—Retrospective operation—Agreement for sale of land executed prior to coming into force of Amending Act—If so

The proviso to S 49 of the Registration Act, added to it by the Transfer of Property Amendment Act of 1929, has no retrospective effect and does not save an agreement of sale of immovable property executed prior to the coming into force of the Amending Act (*Haries, CJ and Far Ali J*) KUBAB MIA v GUHI 19 Pat 90 = 187 IC 198 = 12 RP 566 = 21 Pat LT 1033 = 6 BR 435 = 1939 PWN 880 = AIR 1940 Pat 92

—S 57 (6) and Evidence Act (I of 1872)

S 35—Copy—Registrar's endorsements—Admissibility

Under S 57 (5) of the Registration Act a copy is admissible to prove the contents of the original and the registrar's endorsements appearing in the copy is a relevant fact under S 35 of the Evidence Act as regards presentation and admission of execution (*Pollock, J*) GANPATRAO v NAGORAO 1940 NLJ 437 = AIR 1940 Nag 382

—S 72—Power of Registrar—Order of remand

Under S 72 of the Registration Act, all that the Registrar can do is to vary or alter the order of

In other words it is in the power of the Registrar, if the Sub Registrar has refused registration on some ground which did not entitle him to do so to remand the case to him with a direction to continue in accordance with the Registration Act from the stage immediately before that where the Sub Registrar had acted contrary to that Act (*Thomas CJ and Hamilton J*) LAKHPAT LAL v MT SUKHAJI 1940 OAL 509 = 1940 AWR (C C) 261 = 1940 OWN 600 = 1940 OLR 373 = 188 IC 666 = 13 RO 10 = AIR 1940 Oudh 318

—S 77—Suit under against receiver in insolvency—Notice under S 80 if necessary See C P CODE S 80 AND REC ACT S 77—OFFICIAL RECEIVER 1939 AWR (HC) 878

and 35—Deed presented within 4 years—Representatives of deceased immoned within that time—Validity See REGISTRATION ACT S 34 35 188 IC 666 = AIR 1940 Oudh 318

AND 87 188 IC 666 = AIR 1940 Oudh 318

## RELIGIOUS ENDOWMENTS

See also (1) HINDU LAW—RELIGIOUS ENDOWMENTS

- (2) MAHOMEDAN LAW—ENDOWMENTS
- (3) RELIGIOUS ENDOWMENTS ACT (XX of 1863)
- (4) MADRAS HINDU RELIGIOUS ENDOWMENTS ACT (II of 1927)

Deed of—Power to alter line of succession to—Construction of

## RELIGIOUS ENDOWMENT.

Where a deed of endowment prescribes a line of succession for its management and also gives a power to alter it, the law is that if the power is given to two persons by name, the power can be exercised by both or not at all. But if power is given to two persons not by name, but as office holders, the power can be exercised even by the survivor of the two. In cases where power is given to two persons by name coupled with their description of their office, then, in order to decide whether the power can be exercised by the survivor, the Court has to gather the intention from the terms of the deed, whether the power was given as *persona designata* or as holders of the office and the rule set forth above.

years to manage the small property of the village temple would not lose their right of management of the institution or even of its property (*Horswall, J*) MUNI-

RUCTION 41 E  
 —Mutt—Swami or head—Position  
 —Permanent lease of mutt property—  
 of—Repudiation by successor—Effect  
 LAND ACQUISITION ACT, SS 29 AND 30

—Public or private—O  
 vate individual—Inference  
 endowment from user—If  
 value of such user

18 Mys L J 429

## RELIGIOUS ENDOWMENTS ACT (1863), S 12.

—Public temple—Acquisition of private rights of ownership by prescription—Permissibility—Archakas in

12 1940 Mad 208.  
 ACT (XX OF  
 endowments exis  
 Dig, Col 1044,  
 186 I.O. 28=

12 R P 447 = 6 B R. 282 = A.I.R. 1940 Pat 9  
 —S 12—Powers of Devasthanam Committee—  
 Dismissal of temple trustee—Grounds—Status of  
 of committee to appoint trustee for

not a mere servant of the Devasthanam  
 who appoints him, nor is he liable to be  
 the committee's will and pleasure. A  
 od and sufficient  
 facts a dismissal  
 ide by the Courts  
 trustees appoint  
 m Committee for  
 the management of the Sri Thiruvateeswarar Deva  
 thanam in Madras under the Religious Endowments  
 act of 1863. In 1934, the  
 was filled up

## SEA CUSTOMS ACT (1878), S. 189.

raw nuts subject to duty *ad valorem*, is not an adjudication as to increased rate of duty under S. 182, but a decision as to the normal rate of duty. Such an order if upheld in appeal under S. 189 and confirmed in revision under S. 191, excludes the jurisdiction of the Civil Courts to entertain a challenge of the merits of that decision. The Civil Court has, therefore, no jurisdiction in

—S. 188—Order for conviction of goods. Remedy of aggrieved party—Right of suit. See 1939 Dig., Col. 1051. THIN V. SECRETARY OF STATE 187 IC 542—12 R.O. 589—3 Fed. L.J. (H.O.) 60

—Ss. 188 and 191—Armed officer, not exempted—High Court, if suit interfered by way of mandamus—Specific Relief Act S. 45

The High Court will not interfere with the customs authorities' way of mandamus until the applicant before it exhausts his right of appeal under Ss. 188 and 191 of the Sea Customs Act (*Amis A. J.*) WATSON LANGRISH, COLLECTOR OF CUSTOMS

I.L.R. (1939) 2 Cal. 541—189 IC 556—13 R.O. 77—A.I.R. 1940 Cal. 174

—S. 191—Orders under—If can be questioned in Civil Courts. See 1939 Dig., Col. 1051, THIN V. SECRETARY OF STATE. 187 IC 542—

12 R.O. 589—3 Fed. L.J. (H.O.) 60

SECURITIES ACT (X OF 1920), S. 5. Government promissory note—Mode of transfer. See 1930 Dig., Col. 1151. ECKHART, PROVINCE OF BENGAL

185 IC 214—12 R.O. 350—41 Cr. L.J. 154

SECURITY BOND—Enforcement—Procedure—Bond in name of Judge of Court—Hypothecation of immovables as security for satisfaction of decree—Right of decree-holder to enforce by sale of properties—Assignment of bond by Court—Necessity

security bond and bring the properties to sale, without assigning to enforce (Kendall CHAUDHRI

SECTION 105, S.

SIND INC. 1896, S.

Liquidation scheme—Effect of cancellation—Proceedings, process, execution, and attachment—Reversal of

It is true that there is no specific provision in the Act whereby a liquidation scheme can be cancelled once it has been sanctioned, but there is nothing in the Act to prohibit it or inconsistent with it. S. 32 read with

21, General Clauses Act, empowers the

## SPECIFIC RELIEF ACT (1877), S. 9

Commissioner to cancel a liquidation scheme which he has sanctioned and when such a scheme has been cancelled the position of the estate reverts to the position occupied under S. 19, Sind Incumbered Estates Act, before the liquidation scheme was sanctioned. After relinquishment of management by Commissioner consequent on the cancellation of the liquidation scheme proceedings, process, executions and attachments which were stayed or suspended under S. 9 of the Act and the debts and liabilities barred by S. 14 of the Act revive (*Durr C. J. and Inder, J.*) RICHARD ARJUNATH JAMALUDIN A.I.R. 1910 Sind 225. SOCIETIES REGISTRATION ACT (XXI OF 1900) S. 20—Society or association formed for managing mosque—Association having for its objects, collecting subscriptions for mosque, paying salaries and other expenses for upkeep of mosque and improving Islamic education and rendering help to poor—If can be registered under Act—Right to act as mutawalli of mosque. See 1939 Dig., Col. 1054. MAHOMED HUSSAIN SAHIB, THE MAJIDAH MAHOMED JAMAT.

I.L.R. (1940) Mad. 671—189 IC 860—13 R.M. 342—1940 M.W.N. 31—

A.I.R. 1940 Mad. 167—(1940) 2 M.L.J. 426.

SPECIAL MARRIAGE ACT (III OF 1872), S. 3—Registrar appointed to solemnise marriage between Arya Samajists—Solemnisation of marriage of new Arya Samajists—Validity

Where a Registrar is appointed to solemnise marriages between Arya Samajists, a solemnisation by such a Registrar of a marriage between parties neither of whom were Arya Samajists is invalid (*Id' ibid' A.I.R. 1940*

1054. HIRIZ MOHAN CHANDRABHAGABAI.

I.L.R. (1940) Nag. 645.

—S. 9—Alternative prayer for refund of amount paid—Withdrawal of claim for specific performance—Damages, if could be awarded—Decree for refund with interest—When proper. See 1937 Dig. Col. 1054. JAGGO RAI, HAKIMAR PRASAD SINGH

I.L.R. (1940) All. 52—187 IC 801—12 R.A. 542—A.I.R. 1940 All. 41.

SPECIFIC RELIEF ACT (I OF 1877), S. 9—Applicant—Person claiming undivided share in property from which he and his co-sharers were ousted—Right of suit

The remedy by a possessory suit provided in S. 9 is a statutory remedy for the statute the principle under

—S. 9—Applicant—Claim of undivided physical possession of land—Defendant residing out from statutory market days.

S. 9 of the Specific Relief Act cannot be invoked unless the defendant has deprived the plaintiff of actual physical possession. The section has no application where the plaintiff is still in physical possession of the

## SPECIFIC RELIEF ACT (1877), S. 9

land and what is alleged is that the defendant has induced the stall keepers to pay him the rent on market days instead of paying it to the plaintiff. The only relief that can be granted under the section is the restoration of physical possession. As the plaintiff has not lost that possession there can be no question of restoration. (*Sen, J.*) **SONA MIA v. PRAKASH CHANDRA** 44 C.W.N. 895 = A.I.R. 1940 Cal 464

—S. 9—Decree for joint possession, if may be past ed.

The words of S. 9 of the Specific Relief Act do not refer to exclusive possession. A Court can pass a

RDAS

79=

76=

261.

—S. 9—Order for removal of structures erected by defendant—Legality

All that the Court can do under S. 9 of the Specific Relief Act is to restore the plaintiffs to physical possession. It cannot direct the defendants to remove any structures which they have erected on the land or permit the plaintiffs to pull down the structures. In a suit under that section, the question of the title of the respective parties is not adjudicated upon and therefore, it would be wrong to pass any order regarding the structures on the land. (*Sen, J.*) **SONA MIA v. PRAKASH CHANDRA** 44 C.W.N. 895 = A.I.R. 1940 Cal 464

—S. 9—Suit under—Nature and scope

The plaintiff in a suit under S. 9 must aver previous possession and dispossession by the defendants otherwise than in due course of law within six months being brought, and should aver not only the only prayer in such a suit can be a recovery of possession. The decree of the court or order the plaintiff to be by the defendant, such decree being possession and dispossession merely (*Dunkley, J.*) **DAWFOO v. UPOH** 1940 Rang LR 237 = 187 I.C. 8

A.I.R. 1940 Rang 91

—Ss 12 and 19—Contract to sell land—Default by vendee—Vendor leasing property to raise money for suit for enforcement—If destroys right to specific performance—Claim to damages—Sustainability as an independent claim. See 1939 Dig. Col 1055 **RASA KRISHNAYYA v. SREE RAMULU** 188

11

—Ss 14 to 17—Contract by co sharer entire property—Specific performance in part—If can be enforced

Where a contract for sale of an entire property made by only one of the co sharers of that property the other co sharers refuse to sell their share.

## SPECIFIC RELIEF ACT (1877), S. 23

purchasers as defendants in the course of the suit for specific performance. S. 35, C. P. Code, clearly enables the Court to award costs in the light of the conduct of the parties in the suit (*Varadachariar and Abdur Rahman, J.J.*) **SEETHARAMANNA v. PATTAR REDDI** 1940 M.W.N. 14 = A.I.R. 1940 Mad 739

—S. 18 (d)—Vendor's title imperfect—Refund of advance paid by purchaser—Interest on advance—Right to.

*Prima facie* a purchaser is entitled under S. 18 (d) of the Specific Relief Act to interest on the sum paid by him as advance when the vendor's title is imperfect and not free from doubt, and when there is nothing in his conduct to disentitle him to the same, he must be awarded interest (*Varadachariar and Abdur Rahman, J.J.*) **SEETHARAMANNA v. PATTAR REDDI** 1940 M.W.N. 14 = A.I.R. 1940 Mad 739.

—S. 19—Claim to specific performance plus damages in substitution—If can be joined with alternative claim for damages for breach of contract

A suit may be brought for specific performance of a contract plus damages in substitution of such performance with an alternative claim for damages for breach of contract (*Ameer Ali, J.*) **CALCUTTA IMPROVEMENT TRUST v. SUBARNABALA** 44 C.W.N. 541.

—S. 19—Party giving up specific performance—When entitled to claim compensation

Where in a suit filed by a purchaser for specific performance of a contract for sale of an entire property entered into by a co sharer, and in the alternative for

specific performance, he becomes compensation as an additional or no application in such circumstances. **MANGAL SINGH v. DIAL CHAND** 12 R.L. 524 = 42 P.L.R. 185 = A.I.R. 1940 Lah 159.

—S. 21—Contract of lease—No date fixed for delivery of possession—Specific performance—If can be enforced

Specific performance of a contract of lease cannot be contract for delivery ) **KHUSHI RAM v. 418 = 13 R.L. 76 = I.R. 1940 Lah 225.**

—S. 22—Decree for specific performance—Delay,

b)—Option of repurchase in contract of rent—Right of assignee to enforce

no doubt that both under the common S. 23 (b) of the Specific Relief Act, an option to repurchase which is part of the contract is not assignable. If the contract is one of an option to repurchase, the original grantee or to provide in the document there is no such provision is clearly stated. (*J. V.L.*)



**SPECIFIC RELIEF ACT (1877), S. 42**

of consideration—Discretion of Court See 1939 Dig  
Col 1057. MO MAUNG U v MA HLA ON  
185 IC 733=12 E.E. 222

185 I O 733-12 R.R. 222

**AIR 1340 Bom 339**

—S 42—Declaratory relief as regards status—Grant of—Managing director removed by company by resolution—Suit for declaration that he is still managing director—Resolution found ultra vires

Where in a suit by the managing director who was removed by the company by a special resolution for a declaration that he is still the managing director it was found that the resolutions removing him from office were *ultra vires*

*Held*, that the managing director was entitled to the declaration and the same could not be refused on the ground that the company was not a company which could subsequently remove its directors. (Bhude J)

10010010-AIR 1940 Lab 243

**S 42—Declaratory suit—Maintainability—Suit**  
of company  
directors  
if is a director  
otion of his  
if e ch p suit  
is  
(f)

1114 124074 600 000

—S 42—Declaratory suit—Maintainability—  
Right to consequential relief arising during pen-  
dency of suit

Where a plaintiff was not able to seek further relief than he sought at the time of the institution of the suit and it was only during the trial that he acquired the right to demand that the defendant open to him to apply for an order so as to claim the right to demand that the court might order him to do so, the court, of such order, the court is entitled to grant and is entitled to grant the same was entitled at the time of the institution of the suit. (Pollock, J.)

188 I C 292=

AIR 1940 Nag 99

—S 42—Declaratory suit—Maintainability—Suit to declare plaintiff not the father of a child—Burman Buddhist becoming a rahan—Effect

—§ 42—*Declaratory suit—Maintainability—*  
*Suit with respect to spes successions*

A suit for a declaration not with respect to an existing right but with respect to a  *spes successions* is not maintainable under S 42 of the Specific Relief Act

purchaser's part of earlier transaction source and the nature of the vend disentitle the purchaser to insist vendor's title unless he had agreed the inquiry into title or had agreed title the vendor had (*Varada, 11/11/77* *Uthirai* *100/107* *Kahman, JJ*) **SETHARANAMMA v PATTU REDDI**  
1940 M W N 14 = A I E 1940 Mad 739

—S. 27 (1) (b)—Burden of proof of transfer for value in good faith without notice

BULAK RAM & GANGA BISHUN CHOWDHURY

BULAK RAM v GANGA BISHUN CHOWDHURY  
185 I O 123-12 R P. 301=

AIR 1910 Pat 133  
—S 41—Cancellation of deed of sale executed by  
minor—Misrepresentation as to age—Order for refund

## SPECIFIC RELIEF ACT (1877), S. 42.

(*Mrs. Bu and Dunkley, JJ*) MAUNG AUNG THEIN v MAUNG HA MAUNG 1910 Rang L R 54

—S 42—Declaratory suit—When maintainable—Plaintiff ceasing to be in possession subsequent to suit—The right of the plaintiff to the relief he claims must

—S 42—Declaratory suit—When not maintainable—Unmarried daughter inheriting property under custom—Suit for declaration of title by reversionary heir

Where an unmarried daughter is under custom entitled to inherit the property of her father and to remain in possession until her marriage a suit by a reversionary heir for a mere declaration of title against her does not lie so long as she is unmarried (*Din Mohammad, J*) JUGAL KISHORE v MIST SHANTI BAI

188 I C 798 = 13 R L 48 = 42 P L R 198 = AIR 1910 Lah 184

—S 42—Relief under—Discretion of Court—Inference in appeal

If in the exercise of its discretion a Court of first instance awards a declaratory decree under S 42 of the Specific Relief Act such a decree cannot, no doubt, be reversed in appeal simply because the discretion has been improperly exercised. But this does not mean that even in cases where the discretion has been exercised wholly arbitrarily and in a manner grossly inconsistent with judicial principles the Court of appeal would have no power to interfere (*Kaundkar and Lodge JJ*) UDAY CHANDRA PAUL v B H PARMAR

41 C W N 1063

—S 42—Scope—Contingent right—Suit to declare unqualified right to maintain and cut bunds and to close and repair them—Right claimed subject to permission of Collector—Effect on maintainability of suit

A suit by the proprietors of a mauza for a declaration of their unqualified right to maintain and cut a part of the existing bunds according to necessities of irrigation and to close and repair them is maintainable under S 42 of the Specific Relief Act. The fact that a Notification under S 6 of the Bengal Embankment Act prohibits the obstruction of any watercourse in the area without

Where in a suit for a declaration that a decree based

## SPECIFIC RELIEF ACT (1877), S 45

—S 42—Scope—Suit for declaration of right of fishery—Allegation that plaintiff is in possession at present—Defendant denying plaintiff's suit—Order of Court demanding amendment of plaint—Propriety of before taking evidence in suit. See 1939 Dig, Col 1058

1940 Rang L R 59

—S 42—Suit to set aside sale deed in respect of one of the items—Maintainability

Where a sale deed transfers a series of properties for all of which taken together an over all price has been fixed, it is joint and indivisible so far as the properties are concerned and hence a suit to set it aside in respect of certain only of the properties will not lie (*Duttar*) SURAJ MAL v GHISU LAL 1939 A M L J 162

—S 42 Proviso—Applicability—Property in custodia legis—Possession neither with plaintiff nor defendant—Suit for bare declaration of title—Competency. See 1939 Dig Col 1060 SUNDARESA IYER v SARVAJANA SOWKIBI VIRDHI NIDHI, LTD

189 I C 420 = 13 R M 276

—S 42 Proviso—Declaratory suit—When maintainable—Proof required of plaintiff

Under S 42 of the Specific Relief Act in order to enable the plaintiff to get a declaration it is only necessary for him to show that he has some legal character or some right to property and that his opponent is either denying or is interested in denying such legal character or title. It is not necessary for him to show

by a declaratory decree provided he is not in a position at that time to ask for any other relief consequent on the declaration prayed (*Muthersa J*) NARAN CHANDRA DALPATI v SIDDH NATH SINGH

I L R (1910) 2 Cal 443 = 180 I C 200 =

13 R O 130 = 44 C W N 847 =

AIR 1910 Cal 445

—S 45—Scope—Personal right—Right to be assessed by particular Income tax Officer. See INCOME TAX ACT 25 5 AND 64

1940 I T R 139 =

42 Bom L R 414

Proviso (a) Personal right—Meaning 19 D g, Col 1060 HANKERLAL v COMMISSIONER OF BOMBAY

186 I C 203 = 12 R B 301

Provisos (a) to (e)—Construction and under—Issue of—Conditions for—Discretion and duty of Court—Nature of order to be made

## SPECIFIC RELIEF ACT (1877), S 45

COMMISSIONER OF LOMBAY

—S 45 Proviso (d)

See 1939 Dig, Col 1061 b

COMMISSIONER OF BOMBAY

186 IC 203=

12 E B 301

—Ss 51 and 55—Lament of passage—Infringe

ment—Right to relief by demolition See 1939 Dig

Col 1062 DURGA DEVI v DALIP SINGH

186 IC 311=12 R L 378

—Ss 51 and 55 (1)...

## STAMP ACT (1899) S 24

A.I.R. 1940 Lah 69

—S 57—Contract for sale of goods—Implied

negative covenant—Breach—Injunction See CONT-

RACT—CONSTRUCTION I.L.E. (1940) 2 Cal 53.

STAMP ACT (II OF 1899), S 2 (5) (b)—

'Attested' meaning of—Scribe describing himself

at money was paid in his presence

instrument a bond

instrument in the nature of a pro-

contained a statement at the end 'by

son of M' and also 'the money was

'resence', it was held, that though

be an attesting witness, the mere

money was paid in his presence

e him an attesting witness and, it

se amount to 'attestation' and that

was not a 'bond for that reason

C.J., Zia ul-Hasan and Hamilton,

NARAIN LAL v UDAN SINGH

k 285=185 IC 347=12 RO 220=

R (CC) 321=1939 OWN 1109=

A.I.R. 1940 Oudh 83 (F.B.).

2(14) and 35—Insufficiently stamp d pro-

—Admissibility

A promissory note is an instrument as defined in S 2

(14) of the Stamp Act as it purports to create a liability

and is hence inadmissible under S 35 unless it can be

—Ss 56 and 21—Master and servant—Illegal

dismissal of servant—Injunction, if can be granted

In pursuance of certain articles of association a

member was appointed by the

director and was subsequently

managing director on the basis

constitute an implied contract

company brought a suit for inju-

the company could not prevent

his duties

Held, that the contract on

director relied being dependent on

volition of the parties, the contract

in whether the interest in immovable property transfer-

—S 56 (j)—Conduct of a

no.—One of stamps not can

ral adhesive stamps which

affixed to a promiss-

Stamp Act requires

cancelled If one

note is to be deemed

is concerned, and the

In evidence (Radha

relief A Municipal Committee had refused to grant

permission to a person to build certain structure The

person subsequently induced the Committee to grant per-

mission on condition that he paid certain sum to the

Committee The Committee passed a resolution accept-

Krishna, f) BABU LAL v DURGA PRASAD

188 IC 184=12 RO 421=1940 OWN 581=

1940 OA 512=1940 O L R 328=

1940 A W R (CC) 267=A.I.R. 1940 Oudh 308

—S 24 Expt—Construction—Sale of undivided

## STAMP ACT (1899), S 36

each party, stamp duty, which includes the whole mortgage debt, that is the effect. Certain persons sold one fourth undivided share they had in two immovable properties for Rs 14,000, one of the properties sold was a mortgage debt amounting to Rs 66,633, and that property was sold subject to the mortgage.

It is that the duty on the sale deed

## STAMP ACT (1899) Art 57

document and obtaining of certificate under S. 40 (1) (a)

perly stamped

Held, that it could not be said that the bundi had been admitted in evidence within the meaning of S 36 of the Stamp Act (*Datta J C and Lobo J*) **DHOLAN DAS v TAHILRAM** I.L.R. (1940) Kar 195 = A.I.R. 1940 Sind 194

—S 36—Applicability—Court if should have consciously applied its mind as to admissibility See 1939 Dig Col 1065 **LODHI v ZIA UL-HAQ** I.L.R. (1939) All 846

—S 36—Effect of—Admission in evidence—If can be corrected in appeal See 1939 Dig Col 1065 **RAM CHANDRA v ZOELA** I.L.R. (1940) Nag 671

—S 36—Unstamped award admitted by trial Court in evidence—Admissibility, if can be challenged in appeal

Where an award was admitted by the trial Court in evidence, its admissibility cannot be challenged on appeal on the ground that it was not stamped in view of the provisions of S 36 of the Stamp Act (*Hender son, J*) **GIRISH CHANDRA SEN v. BRAJALAL SEN** 71 C.L.J. 190

—S 40—Collector's certificate—Reference to High Court thereafter—Competency AND 40

—Ss 40 and 35—Document

—Presentation to Court by

Such person if can be compelled to pay duty and penalty

document But it would be obvious ly hard and unfair to compel such a person to pay the duty on the document merely because he attempted to produce it in evidence (*Dalip Singh, Rishi and Bha ker, JJ*)

being shown that he had not accounted for certain sums of money, admits the correctness of the amount due and signs a memo of accounts it is not meant to be an acknowledgment to serve as evidence of liability. In a suit by the employer for the amount agreed to be due, the memo is admissible only to the extent of proving the admission by the agent of the correctness of the memo. It cannot be regarded as an acknowledgment under Sch I, Art 1 of the Stamp Act (*Niyogi J*) **MADHAOKAR v HANMANT** 1940 N.L.J. 635.

—(Burma) Sch I, Art 1—Applicability—Test—Running account—Balance struck and signed every month Stamp if necessary See 1939 Dig Col 1066 **ROSHAN N M A KARIM OMER & Co v MAHOMED EBRAHIM** 185 I.C. 508 = 12 R.L. 198

—Art 35—Landlord and tenant—Agreement by tenant to pay in money varying rent payable under patta—If exempt from stamp duty See REGISTRATION ACT S 17 (1940) 1 M.L.J. 391 (F.B.)

—Sch I A, Art 35 (a) (i) and (viii)—Applicability—Lease from month to month

Where a lease is from month to month and does not

12 R.L. 282 (2).

—Art 57—Applicability—Bond by guardian of minors estate under Guardians and Wards Act—Stamp duty—Court-Fees Act, Sch II, Art 6

## SPECIFIC RELIEF ACT (1877), S 45

COMMISSIONER OF DOMP

—S 45 Proviso (d)

See 1939 Dig, Col 1061

COMMISSIONER OF DOMP

12 R B, 301

—Ss 54 and 55—Easement of passage—Infringement—Right to relief by demolition See 1939 Dig Col 1062 DURGAPATI v DALIP SINGH

186 I O 311=12 E L 378

—Ss 54 and 56 (1)—Municipal Committee imposing illegal tax—Injunction—If can be granted

When a statute creates a body like the Municipal Committee and confers on it power to levy taxes of a particular kind in a particular manner there is no implied obligation on the part of the Committee not to tax the subject in a manner not covered by the statute and if a Committee does impose such a tax it commits a breach of this obligation and a suit would lie under S 54 of the Specific Relief Act.

ceeding available to the plaintiff which can be considered to be 'equally efficacious' (Teh Chand Din Mahomed and Ram Lal J) MUNICIPAL COMMITTEE MONTGOMERY v SANT SINGH 191 I O 65=42 P L E 573=A L R 1940 Lah 377 (F B)

—Ss 56 and 21—Master and servant—Illegal dismissal of servant—Injunction

In pursuance of certain member was appointed by the director and was subsequently managing director on the basis constitute an implied contract company brought a suit for injunction to the effect that the company should not prevent him from discharging his duties

Held, that the contract on director relied being dependent on

—S 56 (1)—Conduct of applicant attorney—Injunction—If can be granted

person subsequently induced the Committee to grant permission on condition that he paid certain sum to the Committee. The Committee passed a resolution accepting the offer but when the person failed to pay the sum as agreed served a notice under S 172, Punjab Municipal Act, for demolition. The person who had built the structure pleaded that the resolution imposing condition for grant of permission was illegal.

## STAMP ACT (1899) S 24

granted injunction  
e were dishonest  
ATHAR MUNICIPAL  
54=12 E L 515=  
I R 1940 Lah 69

—S 57—Contract for sale of goods—Implied negative covenant—Breach—Injunction See CONTRACT—CONSTRUCTION I L E (1940) 2 Cal 53. STAMP ACT (II OF 1899), S 2 (5) (b) 'Attested' meaning of—Scribe describing himself and stating that money was paid in his presence—If makes instrument a bond

Where an instrument in the nature of a promissory note contained a statement at the end 'by the pen of P, son of M' and also 'the money was paid in my presence', it was held, that though a scribe could be an attesting witness, the mere statement that money was paid in his presence could not make him an attesting witness and, it per se amount to 'attestation' and that instrument was not a 'bond' for that reason.

CJ, Zia ul-Hasan and Hamilton,  
NARAIN LAL v UDAN SINGH  
15 Luck 285=185 I C 347=12 R O 220=  
1939 A W R (C C) 321=1939 O W N 1109=  
A I R 1940 Oudh 83 (F B)

—Ss 2 (14) and 35—Insufficiently stamped promissory note—Admissibility

A promissory note is an instrument as defined in S 2

—S 2 (16)—Leave and licence—Distinction

The distinction between a leave and a licence consists in whether the interest in immovable property transfer

v MAHOMED ISHAQ 185 I O 391=12 E A 317 (1)

—S 19—Promissory note—One of stamps not can

hesite stamps, which  
if affixed to a promissory  
Stamp Act requires  
be cancelled. If one  
note is to be deemed  
is concerned, and the  
in evidence (Radha  
RGA PRASAD

=1940 O W N 581=

1940 O A 512=1940 O L E 328=

1940 A W R (C C) 267=A I R 1940 Oudh 308

—S 24 Expl—Construction—Sale of undivided share in property subject to mortgage—Stamp duty—Whole mortgage debt if to be taken into account or only proportional share of debt

Under the Explanation to S 24 of the Stamp Act,

## STAMP ACT (1899), S. 36.

each party, stamp duty, which includes the whole mortgage debt, that is the effect Certain persons sold one-fourth undivided sh they had in two immovable properties for Rs 14 000, one of the properties sold was a mortgage debt amounting to Rs 66 633, and that property was sold subject to the mortgage

Held, that the stamp duty on the sale deed

## STAMP ACT (1899), Art 57.

document and obtaining of certificate under 'S. 40 (1) (a)

The proper time for making a reference to the High

to it nor had admitted it in evidence when he saw that the bundi which the defendant was holding was not properly stamped.

Held, that it could not be said that the bundi been admitted in evidence within the meaning of S.

of accounts—Effect.

Dig. Col 1000 LODHI v ZIA UL-LAH

ILLR. (1939) ALL 816

—S. 36—Effect of—Admission in evidence—If can be corrected in appeal. See 1939 Dig. Col. 1065 RAM CHANDRA v ZOLBA. ILLR (1940) Nag 671

—S 36—Unstamped award admitted by trial Court in evidence—Admissibility, if can be challenged in appeal

Where an award was admitted by the trial Court in evidence, its admissibility cannot be challenged on appeal on the ground that it was not stamped in view of the provisions of S 36 of the Stamp Act (Hender son, J) GIRISH CHANDRA SEN v. BRAJALAL SEN 71 C.L.J 190

—S 40—Collector's certificate—Reference to High Court thereafter—Competency AND 40

—Ss 40 and 35—Documents

—Presentation to Court by person

Such person as can be compelled

There is nothing in S 35 or

under Sch I, Art 1 of the Stamp Act. (Niyogi J.) MADHAORAO v HANMANT 1910 N.L.J. 635.

—(Burma) Sch I, Art 1—Applicability—Test —Running account—Balance struck and signed every month Stamp, if necessary See 1939 Dig Col. 1066, ROSHAN N M A KARIM OMER & Co v. MAHOMED EBRAHIM 185 IC 608=12 R.R. 198

—Art 35—Landlord and tenant—Agreement by tenant to pay in money varying rent payable under patta —If exempt from stamp duty See REGISTRATION ACT, S 17 (1910) 1 M.L.J 391 (F.B.).

—Sch I A Art 35 (a) (i) and (viii)—Applicability—Lease from month to month

Where a lease is from month to month and does not

tant under these sections, the payment of such duty or penalty is left to his choice. If he does not pay, he has to take the consequence of not being able to use the document. But it would be obviously hard and unfair to compel such a person to pay the duty on the document merely because he attempted to produce it in evidence (Dalep Singh, Rhide and Bha ker, JJ.)

—Lease on monthly rental—No term fixed but terminated on one month's notice See 1939 Dig. Col. 1067. NOOR AHMAD v MAHMUD ALI 185 IC 227=12 R.L. 282 (2).

—Art 57—Applicability—Bond by guardian of minor's estate under Guardians and Wards Act—Stamp duty—Court-Fees Act, Sch II, Art. 6

## STATUTE.

RAO v KALAVATHIBAI, 190 I O 221=13 R B 101=  
42 Bom L R 668=AIR 1910 Bom 275

STATUTE—Changes in—If can affect litigant's rights.

That a change in the law does not affect the rights of a party who has acquired a right before the change.

It is commenced. This position can of course be altered if the legislature so decides, but there must be no ambiguity about it (*Stone, C J and Bose, J*)  
GANPATRAO v JAGANNATHRAO

ILR (1910) Nag 468=  
1910 N L J 187=AIR 1

Operative provisions—Proper place for

Operative provisions are to be found in the body of an Act, not in explanations which should explain not expand (*Stone, C J and Clarke, J*) RADHAKRISHNAN JAIKISAN v MUNICIPAL COMMITTEE, KHANDWA

1910 N L J 638

SUCCESSION ACT (XXXIX OF 1925) and Punjab Laws Act (1872), S 5—Adoption—Place in the Succession Act—Succession to estate of Sikh convert to Christianity—Law applicable

On a consideration of the provisions contained in Part IV of the Succession Act which deals with consanguinity, it would be noticed that there is absolutely no mention of adoption as creating any kind of relationship whatsoever. The rule of law applicable in regard to the

Further in the absence of anything to show that the convert after his conversion desired or did something

DHURY v BIRENDRA NATH GOSWAMI

185 I O 631=12 R C 387

S 64—Conviction under—Intent to defraud—Proof of.

In order to maintain a conviction under S 64 of the

RAM CHAND v EMPEROR

189 I C 343=

## SUCCESSION ACT (1925), S. 105.

13 R L 88=41 Or L J 729=42 P L R 215=  
AIR 1910 Lah 274

S 96—Applicability—Will—Bequest to daughter's son for life and afterwards to her sons or sons' sons—Daughter dying leaving son and son's sons—Right of latter to succeed when their father is alive—Bequest from father during suit—Appeal by—If C P Code, S. 146 and O 22, Rr. 10 and 11

The maternal great grandfather of the respondent 1 to 3, and the grandfather of the 4th respondent died in 1917, leaving a will, by which he directed that the balance of the income of his estate, after allowing

for the expenses of the family by trust during her

death all my properties should go in equal shares to such of my aforesaid P's sons or sons' children as are alive. P died about July, 1935 and was survived by her son the 4th respondent whose sons were respondents 1 to 3. In a suit by respondents 1 to 3 and their mother to recover three fourths of the estate of S, a decree was passed in their favour on the footing that the respondents 1 to 3 and their father the 4th respondent became entitled to the estate in equal shares. The Court held that the word "or" should be read as "and". Pending the suit, the 4th respondent created a mortgage of part of the estate in favour of the appellant to be filed in appeal against the decree.

Held that the word "or" could not be read as "and", and that S 95 of the Succession Act should be applied in construing the will and therefore since the 4th respondent died before the death of S, the will was valid.

SHANMUGAM PILLAI, 1940 M W N 899=  
52 L W 279=(1940) 2 M L J 378

73—Applicability and extra-territoriality—Testator's death—Legacy grants

Is a perpetual annuity charge on specific property, in which circumstances the law assumes that it is not annuity alone but the property itself that has been bequeathed.

R a Hindu, died leaving a will, which among others, included a number of annuities one of which was to B, "putra putradi kramad", B predeceased

the estate of inheritance bringing an absolute intention was expressed in the Succession

Act in the events which happened the case was clearly governed by S. 105 of the Succession Act, and on the death

**SUCCESSION ACT (1925), S 111**

of B, before the testator, the legacy lapsed, gift was of a general estate of inheritance Hindu Law namely, to sons grandsons

21 Pat.LT 37—A I R 1940 Pat 257  
S 111—Request in favour of unborn persons—

1916 a Hindu cannot by his will make a bequest covered by S 111 of the Succession Act in favour of a per

A mortgage decree is a piece of movable property, where a testator holding a mortgage decree disposes all his movable and immovable properties to his wife and during his life takes a mortgage bond from the judgment debtor in satisfaction of the decree the wife on the death of testator becomes entitled to enforce the mortgage bond No question of ademption arises under S 152 of the Succession Act (*Fazl Ali and Meredith JJ*) SANTOSH KUMAR BOSE v JALADSASHI DEVI 6 B R 892=190 IC 36=13 B P 153

grant It is no part of the duty of the Testamentary Judge to consider the question of title to property or to determine whether the property for which letters of

made out, to obtain the appointment of a receiver or an injunction against the administrator (*Amar, J*) BAI PARVATIBAI v RAGHUNATH LAKSHMAN 42 Bom LR 1063

S 212—Scope and applicability See SUCCESSION ACT ss 304 AND 212—RELATIVE SCOPE OF A.I.R. 1940 Rang 178.  
S 214—Applicability—Money deposited by employee with employer as security for good conduct—Suit for recovery by heir of employee after his death—Succ

**SUCCESSION ACT (1925) S 228**

respect of claims to a Government servant are under no liability to obtain any succession certificate the amount vests in them upon the death of the deposi

S 214—Applicability—Suit by creditor for recovery of debt—Death of plaintiff—Suit continued by

S 214—Holder of letters of administration not being heir—Right to sue for debt due to defendant's estate See 1939 Dg Cal 1068 KISSFNALAL TILAK CHANDRA 186 IC 121=12 B C 443=71 CLJ 57—A.I.R. 1940 Cal 24

S 214—Scope—Decree passed without production of succession certificate—If nullity S 214 of the Succession Act in effect requires the Judge to insist upon certain evidence in support of the plaintiff's claim before passing a decree but the omission to obtain such evidence (succession certificate)

LAL TILAK CHANDRA 180 IC 121=12 B C 443=71 CLJ 57—A.I.R. 1940 Cal 24.

S 214 (1) (b)—Applicability—Execution proceedings—Trustee holder dies during pendency of certificate FJARAJ v Neg 189 administration of Court. DA CHAU-

22 B C 387  
Ss 228 and 241—Applicability—Grant of Probate in England—Executor unable to come to India—Applicant can by agent for letters of administration—Proceedures—Liability to furnish security—Practitioner Where probate of a will of an English testator has been obtained in England and the executor who is unable to come to India to take out letters of administration grants a power of attorney to another to him to apply as his agent letters of admin



## STATUTE.

RAO v KALAVATIBAI 190 IC 221=13 RB 101=  
42 Bom LR 668=A IR 1940 Bom 275

STATUTE—Changes in—If can affect litigant's rights

has commenced this position can of course be altered if the legislature so decides, but there must be no ambiguity about it (*Stone C J and Best J*)  
GANPATRAO v JAGANNATHRAO

I LR (1940) Nag 468=190 IC 807=  
1940 NLJ 187=A IR 1940 Nag 198

Operative provisions—Proper place for

Operative provisions are to be found in the body of an Act, not in explanations which should explain not expand (*Stone C J and Clarke J*) RADHAKRISHN JAISKAN v MUNICIPAL COMMITTEE KHANDWA

1940 NLJ 638

SUCCESSION ACT (XXXIX OF 1925) and Punjab Laws Act (1872) S 5—Adoption—Place in the Succession Act—Succession to estate of Sikh convert to Christianity—Law applicable

On a consideration of the provisions contained in Part IV of the Succession Act which deals with consanguinity it would be noticed that there is absolutely no mention of adoption as creating any kind of relationship whatsoever. The rule of law applicable in regard to the

convert after his conversion desired or did something indicating an intention to retain any custom of adoption that might have prevailed in the community or the locality to which he belonged before his conversion, any such custom cannot apply nor would succession to the

(Burma), S 37—Illegitimate and adopted children, if included under See BURMA LAWS ACT S 13 AND SUCCESSION ACT, S 37 1940 Rang LR 654

Ss 57 (c) and 63—Oral will by Hindu—Validity

DHURY v BIRENDRA NATH GOSWAMI

185 IC 634=12 RC 387

S 64—Conviction under—Intent to defraud—Proof of

In order to maintain a conviction under S 64 of the

## SUCCESSION ACT (1925), S. 105.

13 RL 88=41 Or LJ 729=42 PLR 215=  
A IR 1940 Lah 274

S 96—Applicability—Will—Bequest to daughter's son for life and afterwards to her sons or sons' sons—Daughter dying leaving son and son's sons—Right of latter to succeed when their father is alive—Mortgagee from father during suit—Appeal by—If lost—C P Code, S 146 and O 22, Rv 10 and 11

S, the maternal great grandfather of the respondents 1 to 3, and the grandfather of the 4th respondent died in 1917, leaving a will, by which he directed that the balance of the income of his estate, after allowing for a charitable bequest, should be paid yearly by trustees appointed by the will to his daughter P during her lifetime. Then followed a provision "After her death all my properties should go in equal shares to such of my aforesaid P's sons or sons' children as are alive." P died about July, 1935 and was survived by her son the 4th respondent whose sons were respondents 1 to 3. In a suit by respondents 1 to 3 and their mother to recover three fourths of the estate of S, a decree was passed in their favour on the footing that the respondents 1 to 3 and their father the 4th respondent became entitled to the estate in equal shares. The Court held that the word "or" should be read as "and." Pending the suit the 4th respondent created a mortgage of part of the estate in favour of the appellant to be filed in appeal against the decree.

Held that the word "or" could not be read as "and" and that S 96 of the Succession Act should be applied in construing the will and therefore since the 4th respon

CHITRAM Ayyangar, J) RAJU CHETTIAR  
JGAM PILLAI 1940 M WN 899=  
52 L W 279=(1940) 2 MLJ 376

S 105—Lapse of legacy—How may be prevented

A testator may prevent a legacy from lapsing. But in order to do so he must clearly exclude lapse and must

on her death during the lifetime of the testator lapses and passes to the son whom the testator had tried to exclude (*Young C J and Teh Chant J*) SHIV DEVI v NAUHARIA RAM I LR (1940) Lah 583=  
190 IC 682=A IR 1940 Lah 318

'73—Applicability and ultra potestati kramae—testator's death—Legacy grants as

is a perpetual annuity charge on specific pro

perty in which circumstances the law assumes that it is not annuity alone but the property itself that has been bequeathed. R, a Hindu, died leaving a will, which among others, included a number of annuities one of which was to B, 'putra potestati kramae', B predeceased

## SUCCESSION ACT (1925), S 111.

of B, before the testator, the legacy lapsed, (3) that the gift was of a general estate of inheritance according to Hindu Law namely, to sons grandsons etc., in due succession, and was not a gift to a person and then to some other person within the meaning of Ill (iv) to S 105 of the Act (*Wart and Meredith, 113* *Lawyer* PRASAD GHOSH v DEBENDRA)

186 IC 172-6 BE

21 Pat.LT 37-41

—S 111—Request in favour of unborn persons—

ed by S 111 of the Succession Act in favour of a per

## TION

—S 152—Applicability—Request immovable properties—Testator having and taking mortgage bond in satisfaction debtor—Effect of—Adequation—If any

A mortgage decree is a piece of movable property, where a testator holding a mortgage decree disposes all his movable and immovable properties to his wife, and during his life takes a mortgage bond from the judgment debtor in satisfaction of the decree the wife on the death of testator becomes entitled to enforce the mortgage bond. No question of adequation arises under S 152 of the Succession Act (*Fauz Ali and Meridath JJ*)  
JALADSASHI DEVI

—S 173—Annuity "Kramas"—Nature of—petual See SUCCESSION 173

—S 211—Inquiry

Letters of administration—Question of title—If estate—Caveat on ground of property being joint family estate—Sustainability—Remedy of executor

In an application for letters of administration the Court has only to see that the person properly entitled to represent the estate of the deceased according to the Succession Act has come to Court, and is given the grant. It is no part of the duty of the Testamentary Judge to consider the question of title to property or to determine whether the property for which letters of administration are asked for was the property of the deceased or not or was the joint property belonging to the deceased and some one else during his lifetime. A caveat cannot be sustained on the mere ground that the property in respect of which letters of administration are asked for is joint family estate. The caveat is no way prejudiced, because he has the right to file a suit to establish his title to the property and if proper grounds are made out, to obtain the appointment of a receiver or an injunction against the administrator (*Kania, J*)  
BAI PARVATIBAI v RAGHUNATH LAKSHMAN

42 Bom L.R. 1063

## SUCCESSION ACT (1925), S 228.

cession certificate—Necessity—"Debt" See 1939 Dig, Col 1068

KUARI

—S

deceased

No

No

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respect of claims to a

Government servant an

y succession certificate,

the amount vests in them upon the death of the deced

Rao, JJ) SUBHADRAMMAL

61 L.W. 575-

—A.I.B. 1940 Mad 590-

(1940) 1 M.L.J. 715

ly—Suit by creditor for

recovery of debt—Death of plaintiff—Suit continued by

tricate—Necessity

ate Act applies not

representative of a

also to a suit origi

continued after his

who is substituted in

—S 214—Holder of letters of administration not being heir—Right to sue for debt due to defendant's estate See 1939 Dig Col 1068 KISSENLAL v TILAK CHANDRA

186 IC 121-12 BC 443-

71 C.L.J. 57-A.I.B. 1940 Cal 24

—S 214—Scope—Decree passed without production of succession certificate—If nullity

S 214 of the Succession Act in effect requires the

SHAMSHERALI FAARUDDIN

I.L.E. (1940) Bom 514-180 IC 359-

13 B.E. 107-42 Bom L.R. 621-

A.I.B. 1940 Bom 283.

—S 214 (1) (a)—Succession—Meaning of Purpose of section See 1939 Dig, Col 1069 KISSENLAL v TILAK CHANDRA

186 IC 121-

12 BC 443-71 C.L.J. 57-A.I.B. 1940 Cal 24.

—S 214 (1) (b)—Applicability—Execution proceedings—Decree holder dying during pendency of Substitution application by heir—Succession certificate—Necessity See 1938 Dg Col 1267 TILAK v. RAMPYAKI

I.L.E. (1940), Nag 193

—S 218—Application for letters of administration—Applicant's case carrying suspension—Duty of Court. See 1939 Dg Col 1069 JNANADA GOVINDA CHAUDHURY v BIRENDRA NATH GOSWAMI

185 IC 634-12 B.C. 337

—Ss 228 and 231—Applicability—Grant of Probate in England—Executor unable to come to India—Application by agent for letters of administration—Pro

See with employer as security for good conduct—Suit for recovery by heir of employee after his death—Suc

tration grants a power-of attorney to another to him to apply as his agent, letters of ad

## SUCCESSION ACT (1925), S. 241.

ought to be issued to the applicant under S. 241 without security and not under S. 223 of the Succession Act. It could not have been the intention of the Legislature to compel an executor living abroad to come to this country to take out letters of administration personally when he has obtained probate of the will in his own country. S. 241 has been read as covering an application for letters of administration with a copy of the will annexed when the original cannot be produced because it is held abroad as the result of that Court having granted probate. S. 241 cannot be read as applying only to the case of an executor temporarily absent from the province.

(1940) 1 M.L.J. 264

—S. 263—Grant of administration limited for representing deceased in suit—Application by executors of deceased's will for its revocation and for grant of probate—Practice. See 1939 Dig., Col 1070 MT. GOLAB DAVE, *In the goods of*

185 IC 341=12 RC 356

—S. 263—Revocation of probate—Civil suit—Maintainability.

*Obiter.*—No civil suit lies to revoke a probate on any ground, for, it is the intention of the Legislature that the exclusive remedy in every case should be an application under S. 263 of the Succession Act (*Panchridge, J*) PANNA LAL v HANSRAJ GUPTA

ILR (1941) 1 Cal 14=188 IC 674=13 RC 18=AIR 1940 Cal 236

—S. 263, III (ii)—Non service of special and general citations—Revocation of grant—Discretion of Court.

Per *Mitter, J.*—Illustration (ii) to S. 263 of the

where such special circumstances exist, and especially if the will had been proved in solemn form before, revocation would not be made. There is no difference in principle between S. 283 (c) persons interest proceedings for and a general citation should be public omission to put is not a subterfuge

## SUCCESSION ACT (1925), S. 301.

that any one is prejudicially affected thereby. (*Mitter and Akram, J.J.*) DINABANDHU ROY v SARALA SUNDARI ILR (1940) 1 Cal 33=188 IC 787=13 RC 35=71 CLJ 25=44 C.W.N. 149=AIR 1940 Cal 296.

—Ss 276, 281, 286 and 295—Proceedings for probate when becomes a suit—*Locus standi* of person not filing caveat. See 1939 Dig., Col 1070 VIOLET PATTERSON v ADELAIDE ELIZABETH FORBES.

15 Luck. 107=AIR 1910 Oudh 16

—S. 283 (1) (c)—Creditor of heir-at-law—Right to object to grant of probate as apply for its revocation

attaching creditor cannot make any difference in principle (*Mitter and Akram, J.J.*) DINABANDHU ROY v SARALA SUNDARI ILR (1940) 1 Cal 33=188 IC 787=13 RC 35=71 CLJ 25=44 C.W.N. 149=AIR 1940 Cal 296.

—S. 283 (c)—"Interest"—Debtor of deceased—Right to object to grant of letters of administration

A debtor of a deceased person cannot by merely contracting a loan become interested in the estate of the deceased and he has no *locus standi* to object to the grant of letters of administration under S. 283 (c). Succession Act. (*Fast Ali and Meredith, J.J.*) SANTOSH KUMAR ROSE v. JALADSASHI DEVI 6 BR 892=190 IC 36=13 RP 153

—S. 283 (1) (c)—"Interest"—Simple creditor of estate—Right to object to grant of probate.

A simple creditor of a testator's estate is not a person having an interest in that estate and he has, therefore, no right to object to the granting of probate of the will. The interest which entitles a person to object to the grant of probate must be an interest in the estate and

a probate proceeding of the term  
10 AUGUSTA  
10 IC 362=13 RC 35=7 BR 9  
to discharge  
nt See 1939

1940 Lah. 38.

C. P. Code, if

contentious.

SSION ACT,

10 C.W.N. 1.

furnish fresh

O. SRI RAM

187 IC 93=12 RL 440=

AIR 1940 Lah 38

—S. 301—"High Court"—If includes original

## SUCCESSION ACT (1925), S. 302.

J.J. JNAN KUMAR DAS v RAM KUMAR DAS.  
I.L.R. (1940) 1 Cal 79=188 I.C. 302=  
12 R.C. 666=44 C.W.N. 258=A.I.R. 1940 Cal 264  
—S 302—Scope—Annuity payable under will—  
Application to recover—Maintainability—Limitation—

A.I.R. 1940 Pat 254

—S 302—Scope—Jurisdiction of High Court  
under—Disputed questions of title and fact—Question  
whether deed of surrender by pardanashin Hindu widow  
is valid—Petition virtually amounting to suit in eject-  
ment—Jurisdiction of High Court to decide See 1939  
Dig. Col. 1071 SUDHANSU MOHAN SIKKAR v.  
HARISH CHANDRA DUTTA 188 I.C. 849=  
13 R.F. 48=6 B.R. 751=A.I.R. 1940 Pat 194

—Ss 301 and 212—Relative scope of—Suit by  
mortgagee to recover debt by sale of mortgaged  
in possession of executor de son tort—Maintain-  
S 304 must qualify S 212 of the Succession  
the two provisions of law must be read together  
is a special provision allowing suits by a creditor against  
an executor of his own wrong to the extent of the

property of the deceased but merely to have his debt

the parview of S 304 and is not barred by S 212  
(*Myns R. and Wosely, J.J.*) MRS MUNROE v ROD  
RIGUES 1940 Rang I.R. 485=180 I.C. 527=  
13 R.R. 84=A.I.R. 1940 Rang 178

—S 307—Executor  
executor to carry on  
business for that purpose  
assets of the estate See  
SHAW DADABHAI v MAHOMED MAHOMED  
I.L.R. (1940) Mad 211=183 I.C. 605=  
13 R.M. 303=(1940) 1 M.L.J. 655 (2)

an executor to enquire into calls outside the will as they  
existed immediately prior to the testator's death Much  
of the usefulness of the statutory power conferred by S  
307, Succession Act, on executors in India would be

## SUCCESSION ACT (1925), S. 328.

—S 317—Accounts—Court's power to examine.  
See 1939 Dig. Col. 1072 GULATI v. KEEVES BROWN  
186 I.C. 39=12 R.L. 837.  
—S. 317—Executor—Burden of proof. See 1939  
Dig. Col. 1072. GULATI v. REEVES BROWN.

12 R.M. 729

—Ss 322 and 323—Crown debts—Priority  
The Crown is not bound by Ss 322 and 323  
of the Succession Act. It enjoys a prerogative  
right of preference in payment to all its subjects  
of debts of equal degree and except in so far as  
the Legislature has thought fit to interfere this  
rule is of universal application. The Succession  
Act does not anywhere touch the prerogative  
of the Crown, and the scope of the Crown  
any  
S. 217  
taxes,  
of the

s to see who are the ordinary  
what order they should be paid.  
and Braund, J.) U BA THIR  
GENERAL, BURMA

1939 Rang L.R. 701=186 I.C. 584=  
12 R.R. 279=A.I.R. 1940 Rang 36

S 325—Debts of deceased—Priority over

S 325 of the Succession Act, the debts of the  
deceased take priority over all the legacies. The only  
persons that are protected are *bona fide* purchasers for  
value without notice (*Bhidi and Din Mohammad,*  
J.J.) SARDOL SINGH v. VIR BHAN 42 P.L.R. 379

over lega  
property

the debts of the deceased takes precedence over the  
legacies. A person who has obtained a decree against  
the deceased can therefore proceed against the proper  
SARDOL SINGH v. VIR BHAN 42 P.L.R. 379

deceased are  
the decretal  
AERUL

AZIZ v DHARAM C. JETHA & CO., DONRAY  
180 I.C. 506=13 R.L. 173=42 P.L.R. 427=  
A.I.R. 1940 Lab 318

## SUCCESSION ACT (1925) S. 332

GIR v DHUNBHAJ KAVASHA MISHRA  
1940

A.I.R. 1940 Mad

—Ss 332 and 335—

Necessity—Executor also

## SURETY BOND

The mere fact that an appeal had to be brought in a

A.I.R. 1940 Ondh 164

**SURETY BOND—Construction—Appeal from decree**  
 —Surety for decree holder for withdrawal of amount  
 pending appeal—Bond by surety—Undertaking to be  
 liable for amount if in this “number” decision is reversed—Part reversal in appeal—Second appeal—Suit  
 entirely dismissed in second appeal—Liability of surety  
 —If extends to second appeal also

The terms of a surety bond must be strictly construed  
 and if the parties in an appeal have failed to make a  
 provision for the contingency of a second appeal, that is  
 —“in case which the Court cannot correct.”

ACT CH I ART 12

1940 N.L.J. 480

—S 379 (3)—Faire to furnish security as directed—Refund of unexpended deposit—If can be refunded  
 See 1939 D.G. Col 1073 *FATMAJI In re*

185 I.C. 372—12 E.N. 154—A.I.R. 1940 Nag 65

—Ss 384 (1) and 388 (2) Provision—App

Forum—Order granting certificate passed by a  
 Judge invested with powers of a District Judge

Where an order granting a succession certificate

JAIRAM

1940 N.L.J. 106—A.I.R. 1940 Nag 162

—Forum—Effect of Appeal—Forum

lower Court is altered in favour of the appellant, and if the respondent has to pay the whole or a portion thereof for that amount I shall be liable.” The appeal resulted in favour of the appellant and the amount payable by him to the respondent was Rs 550. This decision was given on appeal. The appeal was a second appeal to the High

purposes of valuation between a suit under Order 21, Rules 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

—S 8—Suit for declaration of right

Damages for trespass and injunction

1939 D.G. Col 1074 *IAJA BRA*

MANI BEHERA 189 I.C.

13 E.P. 109—A

—R 11—Objection as to jurisdiction—If can be

Construction—Bond providing that sureties would  
 be defendants should succeed in the

—Appeal allowed in

ability of surety—If

*VVERESALINGAM v*

316—12 E.M. 621

Surety bond to free

—Dismissal of claim

—Surety if able

## SURETY BOND

Surety bonds are to be construed primarily upon the terms used in the document and, in respect of any matter on which the bond is silent or ambiguous by a reference to the various rules which apply in such cases. When before judgment a person utters a bond that he "shall either cause produced or its equivalent value in Court upon such decree as the case whenever ordered" and the suit was dismissed for default but was subsequently restored and decreed on a question whether the surety was liable on his bond it was held on a construction of the bond, that his liability did not terminate when the claim was dismissed for default and that when the claim was decreed the surety was liable.

ABDUL

*of Malabar tarwad for proper management by karnavan—Right to be released or discharged from bond*

properties by the karnavan is not entitled to be discharged from the bond on the ground that he is not prepared to continue the bond or that he wants to dispose of some of his properties or that he has lost faith in his karnavan, when it is not the case that he executed the bond owing to any mistake of fact or misrepresentation, etc. In the case of such a bond a surety himself or discharge himself from the sweet will but must obtain leave of the Court can be given for good cause would depend on the circumstances.

(Pondrang Row J) NARAYANAN KUNHATHAYI AMMA

52 LW 119—  
1940 M.W.N. 556—A.I.R. 1940 Mad. 730—

the alternative. Both the principal debtor and the surety are liable at the same time to the creditors' money to the plaintiff, who pre as the company came into financial managing agent of the company for the debt due by the company to it. In the proceedings for the company, and under S. 153 of the scheme of reconstruction was approved by the Court under which the creditors receive half their debts in cash and the share of preference shares. For the scheme was sanctioned, the managing agent (guarantor) that he did not agree to receive preference shares and that his rights under the agreement of guarantee remained unaffected. He received payment under the scheme and passed a temporary receipt in respect of the preference shares which came to his lot, but he did not receive the share certificates from the company and never dealt with the shares and also offered to return the preference shares which came to him under the scheme. In a suit against the managing agent to recover the balance due to him the defendant pleaded that he was discharged from liability as the plaintiff accepted

Y. D. 1940-72

## TEA CONTROL ACT (1938) Sch

ed payment under the scheme as well as the preference shares

*Held*, that the scheme sanctioned by the Court and the

—Discharge of liability—Administration Bond—Maladministration—Completion of administration—Succession Act, s. 263 Expl. (d) See 1939 Dig., Col 1075 NANI LAL DAS, *In the goods of*

185 IC 431—12 B O 364.

—Surety for proceedings and procedure. 18 Pat 761.

—Liability—Undertaking to remain liable notwithstanding debt and agreement and creditor. ACT, S. 143.

(1930) 1 M L J 424.

—Minor's contract—Surety for performance of—Contract being void if absolves surety See MINOR CONTRACT BY 1940 N L J 358

—Surety bond—Construction—Rules—Liability of surety—If limited by recitals

Where a document opened with a recital that security

*Held* that the above clause although covered in wide terms would according to the principles of interpretation have to be construed so far as the executant No 2,

concerned with limited to the I would be appropriations.

MOHAN W. 11 D W N 793

8), B 15—

*Right to obtain license—Lessor or Lessee—Lease executed*

—S. 24—Scope—Jurisdiction of Courts

While the fixing of any quota the granting of and the refusal to grant a licence cannot be questioned by any Court under S. 24 of the Tea Control Act, litigation regarding the consequences of such fixing grant or refusal is not barred by it. The Federal Courts have, therefore, full authority to hear a case involving a question as to who should benefit by such grant, the lessor or the lessee. (Garbett F.C.) RAJ K. NADAR NATH RHIM RAJ 19 Lah

—Sch., Cl. (1) — *Cal a minor's right after Addition of hardship allowance*

## TEA CONTROL ACT (1938) Sch

Under Cl (1) of the Schedule to the Tea Control Act of 1938 the initial crop basis figure will be either the crop basis figure for 1937-38 or the highest crop basis figure fixed for any preceding year after investigation

hardship allowance granted in any previous year (Edgley J) G A LLOYD v INDIAN TEA LICENSING COMMITTEE 44 CWN 584

Sch, Cl (1)—Crop basis—Addition of hardship allowance—Permissibility—Inclusion of such allowance in crop basis under 1933 Rules—If unwarranted

The Legislature in enacting Cl (1) of the Schedule to the Tea Control Act of 1938 could not have intended to provide that a hardship allowance should be added to the crop basis of an estate if such crop basis already included the hardship allowance in question. Such a provision would have placed the estates concerned in an unduly advantageous position with regard to estates which had received no hardship allowance therefore reasonable to hold that the intention of clause in respect of hardship allowances was that

exceeding allowance—Permissibility

R 4 (b) of the Tea Control Rules, 1938, and the scale in Sch I attached thereto must be read

## TORT

The expression 'young clearings' in the latter part of R 4 (b) (1) of the Tea Control Act Rules 1938 has been used in the same sense as the expression 'young area' has been used in Cl (2) of the Schedule to the

the 1st January 1926 (Edgley, J) LIJAYNAGAR LIA CO v INDIAN

—R 4 (b)

of—Resort to Schedule II—Permissibility

The language of R 4 (b) (2) of the Tea Control Act Rules, 1938 indicates that the Committee are not authorized to have recourse to the provisions of Sch II attached to those Rules in calculating the deduction to be made under this part of the rule if satisfactory evidence is forthcoming of the yield which a young area contributed to the production of a tea estate in the year

INDIAN TEA  
71 C LJ 280—  
R 1940 Cal 406

10 (d), 16  
cut down  
Commission  
y District

action by a  
ph authority  
by the tele-  
applies only  
been erected

and not before erection of a line. In the case of cutting down of trees for the purpose of laying a line the order of the Magistrate as to the amount of compensation is

laying telegraph line—Award of compensation—See TELEGRAPH ACT, SS 10 (d) 16 (3) AND 18 1940 M W N 799 = (1940) 2 M L J 254

TITLE—How can pass

divested only  
other means  
sion or relin-  
quishes a deed  
v MOTILAL  
ON LJ 161  
or—Maintain  
NARAYAN  
88 IC 801—  
= 13 EM 110

—Defamation—Civil action for damages—Defamatory statements contained in a complaint to a Magistrate—Privilege

—E 4 (b) (1)—Construction

In construing R 4 (b) (1) of the Tea Control Act Rules 1938 the words 'in accordance with the Rules' should be

—E 4 (b) (1)—Young clearings—Meaning

## TORT

In a civil action for damages for defamation in respect of certain false statements made in a written complaint to a Magistrate the defendant is in a privileged position (*Grille J*) **BRIJLAL PRASAD MAHANT I ALDAS I L R (1910) Nag 48**  
**187 I C 764=12 R N 301=1940 N L J 99**  
**A I R 1910 Nag 12**

*Defamation—Damages—Prosecution and conviction of defendant for damages—If ground for damages*

In cases of defamation the law allows to the wronged party two remedies a civil remedy and a criminal remedy which are different. The fact that there had been a criminal prosecution and conviction obtained

**52 L W 282=A I R 1910 Mad 879=**  
**(1940) 2 M L J 328**

*Defamation—Plea of justification—Burden of proof*

On the question of justification for defamation, the burden of proof lies on the defendant. The burden of proof on this point is not shifted, nor does the presumption of good conduct cease to be available in favour of the plaintiff, in consequence of his having given evidence on his own behalf (*Rowland, J*) **BHAGWAN SINGH v UJAGRA SINGH A I R 1940 Pat 33**

*Defamation—Privilege—Communication or complaint to Police charging a person with criminal breach of trust—If absolutely privileged*

A complaint to a police officer from its very nature as a statement which the complainant is prepared later if called upon to do so, to substantiate upon which is absolutely privileged. The plaintiff took some diamonds from the defendants a firm of Jewellers on approval in April, 1936. On 25-5-1936 the defendants presented him with an invoice for their cost. The diamonds were not paid for. On 27-9-1936 the appellants sent a letter to the Inspector of Police which the plaintiff alleged was defamatory as being equivalent to a charge against him of criminal breach of trust. In a suit by the plaintiff for damages.

Held that the letter in question was privileged absolutely and no action for damages would lie (*Aing J*) **BAPALAL & CO v KRISHNASWAMI AIVAR**  
**1940 M W N 1054=52 L W 519=**  
**(1910) 2 M L J 556**

*Malicious prosecution—Absence of reasonable and probable cause—Proceedings under S 144 Cr P Code—Suit for damages* See 1939 Dig., Col 1080 **NARAYANA MUDALI v PERIAKALATHI**  
**189 L C 801=41 Cr L J 677=13 E M. 110**

*Malicious prosecution—Action for—Facts to be proved in order to succeed* See 1939 Dig. Col 1080 **MAUJI KAM v CHATURBHUI**

**L L R (1939) Kar (P C) 375**  
*Malicious prosecution—Complaint found to be false—Presumption as to absence of reasonable and probable cause if raised—State of mind of prosecutor—Relevant point of time*

In many cases the finding that the complainant's case was false may lead to a presumption that the complainant had no reasonable and probable cause for bringing the complaint leaving him in a position of malicious prosecution to rebut that presumption but in certain other cases such a presumption may not arise

## TORT

at all from such a finding. In the case of a mutual assault where both parties are in a position of equal

in action for malicious prosecution mind of the prosecutor at the time of prosecution (*Radhakrishna J*) **KUNJ BEHARI LAL 186 I C 293=**  
**15 Luck 404=12 R O 302=1940 O L R 113=**  
**1940 O A 195=1940 O W N 201=**  
**1940 A W R (O C) 108=A I R 1910 Oudh 320**

*Liability for damages in malicious prosecution*

proved that a person did with the intention to instigate the false and malicious prosecution and is responsible for it, he is liable for damages. It matters little that he was too careful to come as a witness in the box but preferred to work behind the curtain. He is in truth the real prosecutor the nominal prosecutor being merely his tool (*Davis J C and Weston J*) **ISSARDAS KISHIN CHAND v ASSUDOMAL I L R (1910) Kar 230=**  
**189 I C 72=13 R S 14=A I R 1910 Sind 90**

*Malicious prosecution—Liability for—Police prosecution on defendant's report—Report not proved to be false*

Where the defendant in a suit for damages for malicious prosecution had filed no complaint in Court against the plaintiff but had only entered a report with the police for rioting, etc. and the police after due investigation and making sure that the report of the defendant was correct had filed the charges against the plaintiff, who after judicial inquiry, was acquitted and the plaintiff could not prove at all that the defendant had entered the report with the police which was false and based on enmity and to cause injury to the plaintiff.

Held under the circumstances no responsibility for damages lay on the defendant (*Birds J*) **FAYAZ MOHAMMAD v SARDAR KHAN 187 I C 689**

*Malicious prosecution—Liability for—When arises—Mere expression of suspicion to police—Prosecution by police—Accusation—Complainant liable*

In a suit for malicious prosecution the question is whether the defendant is substantially responsible for the prosecution of the plaintiff and whether he has or has not acted in good faith. Where the defendant merely expressed his suspicion regarding the plaintiff and did not positively say that he was guilty and left the matter to the investigation of the police and did not take any unduly active part in the conduct of the case he is not liable if the plaintiff is prosecuted and ultimately acquitted.

*Malicious prosecution—Prosecution on facts to be proved—Knowledge—Malice if can be inferred*

When a prosecutor launches a prosecution based upon a statement which he knows to be untrue and for which there is no reasonable and probable cause that every circumstance would raise the inference that there was malice in his instigating the prosecution (*Mysa Uday J*) **DAW YON v U MIN SIN**  
**1910 Rang L R 631=**  
**A I R**



## TORT

—Malicious prosecution—Prosecution on legal advice—When could absolute prosecutor from liability for damages

ca  
op  
tio  
for  
launched the prosecution upon certain facts which he knew or must have known to be untrue or upon the conclusion drawn by the lawyer which he could not believe to be correct the prosecutor is not entitled to take shelter under the lawyer's advice in a suit for damages for malicious prosecution against him (*Mysa Bu and Alse's JJ*) DAW YON v U MIN SIN  
1940 Rang L R 631=190 IC 830  
AIR 1940 Rang 230

—Malicious prosecution—Prosecution when starts  
It cannot be said that he is a

LAND INC., CALCUTTA 190 IC 755=  
1940 N L J 237—AIR 1940 Nag 225

—Malicious prosecution—Reasonable or probable cause—Burden of proof See 1939 Dig Col 1081  
GOBIND RAM v KAJU RAM 185 IC 652=  
12 R L 310=42 P L R 232

—Malicious prosecution—Suit for—Essentials—Malice—Proof—Inference from absence of reasonable and probable cause—When justified

and Kunhi Raman JJ) AI  
MAGANLAL JAVERI  
51 L W 635=

—Malicious prosecution—  
If proved

tion of the defendant, that the prosecution was instituted without any reasonable and it was due to malicious intent (*Davies J C and Weston*)  
CHANDU ASSUDOMAI I  
189 IC 72=13 R S 1.

—Malicious prosecution

## TORT

favour of the plaintiff, but it is not evidence that the prosecution was false and malicious, for a Civil Court must in its own proceedings form its own judgment  
1 opinion of the  
be decision itself  
iston, J) ISSAR

72=13 R S 14=  
AIR 1910 Sind 80  
—Negligence—Building used by occupant for storing combustible material—Loss by fire—Failure to take precautions against fire or to put out fire or to rescue anything from fire—Liability for damages to owner of building

It is the duty of a person in occupation of a building in which articles liable to spontaneous combustion are stored to have efficient watchman to guard against spontaneous combustion and to have all reasonable fire  
s not take special  
makes no attempt  
water from a well  
be held guilty of  
ges to the owner of  
quitar applies to  
Herwall, JJ)

190 IC 755=  
1940 N L J 237—AIR 1940 Nag 225

—Negligence—Contributory negligence—Motor cyclist coming into collision at midnight with stationary  
185 IC 652=  
12 R L 310=42 P L R 232

of fact not of law and each  
own facts At night time  
ed obstruction to a person

42 P L R 109  
—Negligence—Shipowner—Responsibility regarding health and safety of crew

The responsibility of a shipowner in regard to the securing of the health and safety of the crew is in

## TORT.

*—Negligence—Suit for damages—Onus—Plaintiff's house damaged by water escaping from municipal burst pipe—Essentials to be proved by plaintiff.*

In a suit for damages for negligence against a Municipality for not maintaining the water pipes in proper condition, the plaintiff to prove that

cannot be said to be negligent because they had not, according to a technical book produced in Court, fitted or had not proved that they had fitted air valves, scour valves, reflux valves, safety or relief valves or sluice top valves when the municipal water system had worked well for over thirty years without these valves. The water supply and the pipes were under the control of municipal management and, if damage arises from ordinary course of things, will occur, that there was want of explanation by the defendants. Where the Municipality have shown that the pipes were laid down and the system maintained with reasonable care and skill, the plaintiff must fail unless he can adduce evidence to the contrary. (*Datta Chandra and Lobo v. RAMDAS*)

*—Negligence—Test*

Dig. Col 1032 KAN. 135-185 IC 539-12 RL 302  
ILLR (1940) Lah 135-185 IC 539-12 RL 302

*—Negligence—What constitutes—Contributory negligence—Person proceeding on motor cycle on proper side—Car proceeding on opposite direction suddenly turning right without warning or indication and dashing into motor cycle—Liability for damage—Owner of car—Liability of—Person riding in car at the time—If liable—Master and servant*

Defendant No. 3 owned a motor car which was kept

the car was being taken by defendant 2 on a business of the third defendant. The road was clear except for the defendant's car and another car coming in the same direction and the plaintiff was sounding his horn and was indicating by a movement of his hand that he was

was then almost at the gate and could do nothing to avoid the car of the defendants. The car dashed against the plaintiff's motor cycle, and caused serious injuries to the plaintiff and damages to his cycle. The road was not a broad one and the turn to the gate was sharp. The defendant's car could have gone on straight and then entered the premises through another gate which was the ordinary route to the premises. The deviation and entry by the particular gate were done at the instance of the 2nd defendant for his private purposes. The plaintiff sued defendants 1 to 3 for

## TORT.

damages for negligence. The defendants *inter alia*, pleaded that the plaintiff was riding rashly and negligently and was guilty of contributory negligence.

Held, (1) that there was no doubt that the accident was due to the negligence on the part of defendant

anticipate the sudden intention of the driver of the car and who, under the circumstances, had a right to go along the road at any speed he liked, as it was practically clear of any traffic, (3) that there was a duty cast on the 1st defendant to exercise such care as would avoid an accident, and the first defendant failed in the exercise of that duty.

was, at the time, being taken on the business of the 3rd defendant and defendant No 1 was acting in the course of his employment, defendant No 3 was liable and the services of defendant No 1 could not be

and the fact that there was deviation in the route at the instance of the second defendant made no difference and the second defendant was therefore not liable to the plaintiff, (7) that the third defendant, the employer was liable to the plaintiff for the negligence of its servants the first defendant (*Abdul Ghani and Venkataranga Iyengar v. J. BANGALORE PRINTING AND PUBLISHING CO. LTD. v. M. K. MURTY*)  
45 Mys H.C.B. 163-18 Mys L.J. 315.

*—Nuisance—Damages—Assessment of—House becoming unfitable due to proximity of nuisance*

Where the proximity of a nuisance is one of the main reasons, though not the whole reason, for a house becoming unfitable, the fair amount at which to assess the damages is the amount of loss in monthly rental value

*—Nuisance—Duty of neighbour*

A neighbour must do everything "within reason" to see that it is not a nuisance. (*Amur Ali, v. BASIL CORPORATION OF CALCUTTA.*)

ILLR (1940) 2 Cal 131-71 C.L.J. 403

*—Nuisance—Public nuisance—Private action—Special damage—Necessity—Constructions on Rashtra—No harm to plaintiff—Right to maintain suit. See 1939 Dig. Col 1082 KAN. 135-185 IC 539-12 RL 302*

*—Nuisance—Public nuisance—Special damage—Facts to be proved*

In order that a person may be indirectly entitled to maintain a civil action, in respect of a public nuisance he must show that he has suffered some damage more than what the general body of the public had to suffer. It was held in this case that because of the fact that a person's house which did not in any manner his coming to or going from his house and which merely a possible nuisance from a different view, could not be regarded as causing

## TRADE MARK

his goods in Bhopal acquires in respect of that mark such rights as the Courts here would protect (*Muhammad Ahmad Khan, C J*) KAMLAPAT GHASIRAM v BHU-KABHAL NARAINDAS 188 IO 462

—Similarity of marks—Differences in get up—If material

It is not an answer to the claim of a trader who established the right to a trade mark (e.g., a device or a fancy word) to say that, apart from the device or the

But the question he mark SONS v PRAYAG NARAIN 67 IA 212=

ILR (1940) Kar (PC) 171= ILR (1940) All 416=187 IO 658= 12 RF

—S by side—If proper test

The test of comparison of the marks side by side is

especially if the goods are in practice asked for by a name which denotes the mark or the device on it (*Viscount Maugham*) THOMAS BEAR & SONS v PRAYAG

12 RF

tr fa M — — — — — It necessary—Principle—*Principle of* 1939 Dig, MUGHAVI

TRADE UNION—What amounts to See SHIP AND TRADE UNION 1910

TRADE UNIONS ACT (1929) S 13—Unregistered Trade Union—Suit by one against another as a contracting party to it—Main availability

S 13 of the Trade Unions Act merely says that if a trade union is registered it can sue and be sued. In the case of a combination resembling a trade union which is

## T P ACT (1882) S 3

*J. and Bose, J*) RADHAKISAN v JAMNADAS 190 IO 491=13 EN 102= 1910 N L J 239=A IR 1910 Nag 228

TRANSFER OF PROPERTY ACT (IV OF 1882)—Scope—If exhaustive of matters dealt with

From the preamble to the Transfer of Property Act it is clear that the Act does not purport to be exhaustive but only to deal with certain specific matter and also that primarily it was enacted to deal with transfers by act of parties. No doubt it touches here and there certain allied matters but in view of the comparatively cursory manner in which they are dealt with and in view of the preamble, the Act cannot be regarded as exhaustive when it deals with those allied topics which are foreign to its main purpose (*Stone, C J and Bose J*) GHASIRAM v KUNDANBAI 1910 N L J 1= A IR 1910 Nag 163

—S 2 (a)—Scope and effect of S 2 (i) on S 100 1 AND 2 (d) 1910 A L J 560

ble claim—Mortgagee assigning pending money suit—Validity—execute decree as assignee—Sui such right—Specific Relief Act Col 1087 PURNA CHANDRA KUMARI DEVI 187 IO 806=12 BO 612

—Ss 3 and 59—Attested meaning of—Scribe, if

person has signed the document of the fact that he saw it e a person places his signature upon a document and at the same time describes himself as the writer thereof, though the inference is that he signs as the writer and nothing else it can as a matter

The English law relating to fixtures does not apply in bedded in the earth or ded for the permanent which it is attached, then property. If the attachment is a chattel even though

Notice—Punjab

The Transfer of Property Act is not in force in the Punjab and hence S 3 of that Act as amended in 1929

T P ACT (1882), S 4

FATIMA v GOPAL DEVI

190 IC 599=

T P ACT (1882), S 41

S 11—Settlement deed—Construction of—  
 —conferment of estate  
 —Subsequent clause  
 of—Deed—Con  
 OFFICIAL RECEI  
 RAVIJAYAM CHET  
 288=12 RM 528

ability—Two amounts due to one and same person  
 under two transactions from same debtor—Sale  
 of property by debtor—Consideration left with  
 vendee to pay off both amounts—Assignment by  
 creditor of one only—Validity—Suit by assignee

S 11, Proviso—Scope—Maintenance decree  
 charging immovable properties—Arrears due under—  
 Transfer of portion by decree-holder—Stipulation that  
 assignee should not bring charged property to sale—  
 Validity of See 1939 Dig Col 1091 VENKATAPPA  
 NAVANIM BAHADUR v SUNDARARAJULU NAIDU  
 185 IC 427=12 RM 541

S 18—Applicability—For the benefit of the  
 public—Meaning of—Roman Catholic—Dedication of  
 properties for defraying expenses of puja at father's  
 tomb and for feeding pilgrims at festival—Validity

At a Roman Catholic Church, along with three  
 docu  
 but

which was in fact an arrangement for the payment of  
 the debts due by all the members of the family and in

"property" The transferee of a part of a de  
 may however, find that what is transferred  
 him is not an actionable claim as under O  
 R 2, C P Code, a single cause of action can  
 not be split up into several causes of action  
 But O 2, R 2, C P  
 cedure, does not affect  
 that is to say, it cannot  
 be non transferable

4/ acres of nanja and punja lands for a Chetty Caneu

the seller might mention the two amounts to-  
 gether as a consolidated amount and though  
 both the sums are payable to one and the same  
 person If the person to whom they are due  
 chooses to assign one of them only it is not an  
 assignment of a part of a debt, but is in fact  
 assignment of a distinct and separate debt  
 is a valid assignment which gives the assignee  
 right to sue for its recovery

Per Harries, C J Quere whether a part of  
 a debt is assignable (Harries C J and Foul-  
 sh J) DURGA SINGH v KESHO LAL  
 18 Pat 839=185 IC 514=12 RP 376-  
 6 BR 195=21 Pat LT 928=

AIR. 1940 Pat 170

S. 6 (a)—Relinquishment by Hindu reversioner

with lights flowers incense, etc., according to the custom  
 of the family A creditor of M attached the dedicated  
 properties whereupon M claimed that the properties  
 being dedicated properties were not liable to attachment  
 and sale

meaning of S 18 T P Act and there was therefore a  
 valid trust (Pandurang Rao and Horani JJ) R. M  
 S FIRM v MUTHUSWAMI ODAYAR

52 L W 793=1940 AI W N 1180=

(1910) 2 M L J 203

S 36—Applicability—As gner of lease—Right  
 to claim apportionment of rent See 1939 Dig. Col  
 1091 C P FERNANDEZ v RAMAKRISHNA  
 40 Mad 21

does not deal  
 short of it,  
 the former  
 is fixed by a  
 (Sim. C

—Attachment before but sale after accrual and ascer-  
 tainment of profits—Purchaser's suit for such share—  
 Maintainability See 1939 Dig. Col 1089 JAGAN-  
 NATH v JAMNABALLABH ILR. (1940) Nag 57

S 6 (b)—Applicability—Inam grant burdened  
 with service in temple to be enjoyed by family of  
 grantee with heretofore right—Usufructuary mortgage  
 of—If void See GRANT—CONSTRUCTION

1940 M W N 404.

1940 N L J 1—AIR. 1940 Nag 163.

S 40—Applicability—Karnam deed—Stipulation  
 that Jemli is to pay compensation at specified rate—If  
 covenant running with the land See MA'ARAR COM-  
 PENSATION FOR TENANTS' IMPROVEMENTS ACT,  
 S 19 (1910) 1 M L J 163

S. 41—Applicability  
 Where a Mahomedan has  
 a mortgage of two houses and the mortgage

## T P ACT (1882), S 41

been registered as executed by the husband alone the wife allowing her husband to represent himself as the ostensible owner of the case is *Mohammad*

—S  
owner—Proof—Entry in survey Register—  
See 1939 Dg Col 1092 PERUMAL v  
SUBRAMANIA MUDALIAR 185

—S 41—Applicability—Court sales See 1939  
Dg, Col 1092 BABA RAMCHANDRA v KONDOO  
JAGNA A.I.R. 1940 Nag 7

—S 41—Applicability—Hindu widow Allegation  
of adoption of son—Adopted son dealing with property  
and executing mortgage—Death of adopted son—Rever-  
sioner impeaching mortgage—Estoppel—Burden of  
proof

C a Hindu died in 1806 leaving his widow D and a  
daughter R R had three sons one of whom was living  
with D till 1921 when he died It was alleged that  
he had been adopted by D and was treated as the  
adopted son of C He dealt with the property of C as  
if he were an adopted son and in 1918 executed a mort-

gage deed in which he mortgaged the property to D  
and her sons. It was contended that the son of D  
was not binding on her and for an injunction to restrain the

## T P ACT (1882), S 43

—S 41—Gift—Subsequent transfer by donee—  
Person challenging gift—Facts to be proved

1 to another  
other person  
on challeng-  
had notice

—S 41—Principle underlying—If applies to  
auction sales See MINOR—DECREE AGAINST

1940 A L J 166

—S 41—Purchaser with notice of real title—If  
acquires no title

It cannot be said that a purchaser from an ostensible  
owner who purchases with notice of the real title acquires  
no title He acquires a title which is voidable at the  
instance of the real owner and until his purchase is  
avoided he can deal with the property (*Mitter and  
Korburgh JJ*) PURNENDU NATH v HANUT MULL  
44 O W N 813=71 C L J 520=  
A.I.R. 1940 Cal 565.

—S 41—Subsequent transferees—Rights of

S 41 of the T P Act does not in terms apply either  
to the ostensible owner or to the  
transferees from volunteers  
or purchasers from volunteers  
or consideration from the  
rights of such successors in  
interest are to be determined  
by the first transferee  
as a bona fide purchaser for value  
and title and any transferee  
from him with or without notice of the real title would  
in equity acquire a good title If the first transferee be  
either a volunteer or a transferee for value but with  
notice a bona fide transferee from him for value without  
notice would in equity be still protected on that princi-  
ple (*Mitter and Roxburgh JJ*) PURNENDU NATH  
v HANUT MULL 44 O W N 813=  
71 C L J 520=A.I.R. 1940 Cal 565.

—S. 43—Applicability—Alienation of ancestral  
property by Hindu father without necessity—Subsequent  
division—No misrepresentation—Benefit of S 43 if  
available

S 43 of the T P Act is not applicable to cases of  
transfers of property which by law was not transferable  
Where a father in joint Hindu family in Oudh alienates  
ancestral property without necessity and there is a  
subsequent division in the family, but the mortgage  
clearly indicated that there was a possibility of the

T P. ACT (1882), S 44

made, was subsequently cured by virtue of S 43 T P. the from

Lal v MISRI

1940 A W R (H C) 469-1940

A I R 1

—S 44—Scope—Mortgage of share

fact that the mortgage deed confers on the mortgagee a right to sue for partition would not entitle him to sue for partition if in law he is not entitled to (Vankata

—Rights of See PARTITION ACT, S 4

A I R 1940 Rang 53

—S 51—Applicability

S 51 applies only when the transferee believes that he is absolutely entitled to the property Therefore

—S 51—Applicability—Trespasser or person claiming under will

Obiter—S 51 does not apply to every person who is in possession of property It does not apply to a trespasser It does not apply to a person who claims under will because S 5 of the Act relates to conveyance between living persons (Davis J C and Lobo TOPAN MAL P CHANCHALMAL

I L R (1940) Kar 241-188 I C 225-

12 R S 280-A I R 1940 Sind 77

—S 51—'Transferee'—Meaning of

writing does not affect the fact that it is a transfer within the definition of S 5, a conveyance of property between living persons so that a person to whom immovable property of the value of Rs 100 or upwards has been transferred or purported to have been transferred

T P ACT (1882), S 52

—S 52—Alienation of property after order on claim petition and before suit under O 21, R. 63, C P Code—If affected by lis pendens

—Attachment in execution  
—Subsequent alienation—If affected by lis pendens  
See C P CODE S 64

52 L W 862-

(1940) 2 M L J 1038

ty—Hindu widow—Suit for  
—Charge created

by decree—Priority over sale pending suit

The doctrine of lis pendens embodied in S 52, T P Act, applies to a sale made during the pendency of a suit for maintenance by a Hindu widow in which property sold is sought to be made a charge for the widow's

created over specific property in a decree for maintenance takes precedence over the right of a private or auction-purchaser of the same property during the pendency of the suit (Broomfield and Deatua JJ)

obtaining possession though lease not signed by both parties—Suit by lessee against purchaser availing benefit of S 51—If registration complete

(1940) 2 M L J 791.

—S 52—Applicability—Sale under Bombay Land Revenue Code for arrears of tax—Lis pendens

Obiter—Although the principle of lis pendens would apply to involuntary sales it cannot be made applicable

## T. P. ACT (1882), S 52

It is a settled principle of law, that in order to attract

## T. P. ACT (1882), S 53.

—S. 53—*Applicability—Fictitious sale without*

—S 52—*Mortgage suit—Lis when terminates*

It is well settled that the *lis* in a mortgage suit continues after the decree and does not terminate when security has been realised for satisfaction of the mortgage debt (*Mukherjee, J*) **KHULNA LO LTD v TARAPADA BOSE 44 C W**

—S 52—*Partition suit—Pendency in Court—Mortgage during that period—Re protest to proper Court and ultimate decree—Not affected by lis pendens*

Where during the pendency of a suit by a partition instituted in a wrong Court the father executes a mortgage of the family property, and the mortgage is returned, for presentment and it is so presented after an ultimate decree for partition not effected by *lis pendens* a decree for partition must be deemed to have been instituted only when the plaintiff was filed in the proper Court (*F*)

T P Act and the transaction can be avoided without a suit under that section. But the onus would then be on the plaintiff to show that the transaction was a fraud on the creditors—Frame of—Leave under O 1.

—S  
against interest

on behalf of all the creditors not for himself alone

—*Transfer*  
*mini*

The explanation added to S 52 of the T. P. Act makes it manifest that *lis pendens* continues till the decree obtained in the suit is completely satisfied or discharged or the execution of the same becomes barred by limitation. Where a subsequent simple mortgagee purchased the mortgaged property in execution of a decree for sale obtained in respect of his mortgage, and the earlier usufructuary mortgagee under a usufruct mortgage executed prior to such auction was not redeemed a simple mortgagee earlier to that of the one on which the decree had been obtained, was held to be not entitled to claim to hold that earlier mortgage as a shield against the claim for possession by the subsequent mortgagee auction purchaser. He was also held not entitled to claim any reimbursement in respect of the earlier mortgage redeemed by him, inasmuch as the purchaser was entitled to ignore the usufructuary mortgage itself in view of S 52 of the T. P. Act (*Iqbal Ahmad, J*) **HAIR PRASAD v SITA RAM 187 IC 332—12 RA 520—1940 A.W.E. (H.C.) 4—AIR 1940 All 141**

transaction relied on by the successful claimant is a bogus one and to have the transaction set aside on the footing that it is a fraud on the creditors falls under S 53 T. P. Act and must fail, if leave of the Court is not obtained for suing on behalf of all the creditors

—S 53—*Applicability—Transfer of movable property—Part of consideration fictitious—Transfer, if wholly void See 1938 Dig Col 1296 MOTILAL v MT. KASHIBAI I.L.R. (1940) Nag 316*

—S 53—*Bona fide transferee from fraudulent transferee—If protected*

A bona fide transferee even from a fraudulent transferee is protected under S 53 (*Din Mohammad, J*) **MAN SINGH v BN SINHA AIR 1940 Lah 198**

—S 53—*Fictitious transfer—Transfer in favour of wife*

Where subsequent to a transfer of a property by the husband in favour of his wife the husband and wife no proof that the wife had transferred the property in a separate account after the husband had transferred his property for the benefit of the trustees of the property transferred that the transfer

## T. P. ACT (1882), S 53

by the husband to the wife is a fictitious transaction which is not intended to be acted upon (*Young, C. J. and Tek Chand, J.*) **BULAQI MAL AND SEN v**

against creditors—Construction of decree

Where in a suit by a creditor of a decree holder under

defendant 'It must be cancel the assignment and in part leaving it effective to the assignee and ineffective (*Beaumont, C. J. and* **KRISHNAJI v VITHU GOVIND**

creditors—It may be upheld to extent paid See 1939 Dig. Col 1095 **CHETTIAR v VELU MURUGA NADAR** 188 I.C. 1

—S 53—Fraudulent transfer—Is valid—1911

—S 53—Intention to defraud—Surrender of property to one of creditors under compromise.

Where a debtor yielding to the immediate pressure exercised by one of the creditors by reason of a suit brought by him enters into a *bona fide* compromise with him, the mere fact that by the compromise he surrenders a portion of his property to the creditor does not show that he commits any fraud or has any intention of defrauding other creditors (*Dalip Singh and Sale, J.*) **BULAQI MAL AND SONS v JASWANT RAI**

42 P.L.R. 385.  
—S 53—Preference of one creditor to another—If fraudulent

A debtor who is not on the verge of insolvency is entitled in law to prefer one creditor to another. A sale by the debtor in favour of one of the creditors, the consideration for which consists of previous loans only cannot be attacked as having been made with intent to defraud and delay the other creditors (*Din Mahomed, J.*) **KEHRI MAL v ANUP SINGH**

42 P.L.R. 119.  
—S 53—Remedy under—Nature of.  
Per *Bramd, J.*—The statutory remedy provided by S 53, T.P. Act, is merely supplementary to the common

## T. P. ACT (1882), S 53-A.

law right of a creditor in execution proceedings to obtain a declaration that a transfer by a decree holder, by reason of its 'benami' character never operated as a transfer at all and, accordingly left the property it purported to transfer available to him in execution. In

and B  
PRAS

transfer challenged by defendant-creditor

he creditor has to challenge the transaction six years, but where the creditor has possession of a defendant, no time limit affects his defence and he can consequently challenge the

—S 53-A—Applicability—Receipt—When sufficient See 1939 Dig. Col 1095 **MAHOMED YUNUS**

—S 53-A—Applicability—Transfer prior to amendment—Dispute in Court subsequent to amendment

S 53-A of the T. P. Act only debars the transferor's plea of the sale being invalid for lack of registration and does not invalidate the transfer. It is a kind of estoppel which comes into operation only when the dispute comes to Court. Where the dispute comes to Court after the amendment came into force, the doctrine of part performance can be invoked though the transfer in question was at a date prior to the date of amendment itself (*Niyogi, J.*) **BALARAM JAIRAM PATIL v KEWALRAM** 1940 N.L.J. 493—A.I.R. 1940 Nag 306

—S 53-A—Benefit of—It can be claimed by lessor under a lease with Municipality—Leave not executed in accordance with Municipality Act See U. P. MUNICIPALITY ACT, S 97 1940 A.W.E. (H.C.) 212.

—S 53-A—Part performance—English doctrine—Availability

The English doctrine of part performance is not available in India by way of defence to a suit for ejectment except under the provisions of S 53-A of the Transfer of Property Act. In cases to that section is applicable. **J.** P.D.A.



## T P ACT (1882), S 53 A

MUKHERJEA v ELOKESHI DEVI 189 I.C. 249=  
13 R.C. 61=71 O.L.J. 144=44 C.W.N. 357=  
A.I.R. 1940 Cal 254

—S 53 A—Part performance doctrine of—If can be pleaded by purchaser from Hindu widow, against the reversioner

The decision of the question on whether the doctrine of part performance could be pleaded by a purchaser from a Hindu widow, as against the reversioner, would depend upon the answer to the question whether the reversioner was a person claiming under him (i.e. transferor widow). The test to be applied is to see whether the acts of the deceased widow affecting the property bind the reversioner or not. A reversioner has to take the estate as it stands on the widow's death.

—S 53 A—Requirements of—Unilateral act of vendee—If sufficient. See 1939 Dig. Col. 1098  
FIRDOS JAHAN v MAHOMED YUNUS 15 Luck 43=  
A.I.R. 1940 Oudh 1

—S 53 A—Scope and nature covered by. See 1939 Dig. Col. 1099

S 53 A, T P Act  
be made a ground of  
forfeiture cannot be  
attack it is a right  
protect his possession  
KANTH v F

—S 53 A—Retrospective operation

S 53 A of the T P Act which was enacted by the Amendment Act XX of 192 (Kania and Waddow J J  
Bai Champa

42 Bom L.R. 31

—(as amended in

—Retrospective operation—Applicability to trusts  
actions effected before 1-4-1930

S 53-A Transfer of Property Act, has re-

## T P ACT (1882), S 55

be answered at the time when it arises that is when the suit is filed (Beaumont C.J. and Sen, J.) RUSTAMJI DOSSABHAI v BHAI MOTI I.L.R. (1940) Bom. 50=187 I.C. 27=12 R.B. 422=41 Bom.L.R. 1310=  
A.I.R. 1940 Bom. 90

—S 54 and Provincial Insolvency Act (V of 1920) S 58—Applicability of S 54 T P Act—Sale of mortgagee's interest by Insolvency Court where no receiver was appointed

S 54 of the T P Act makes a registered deed requisite by whomsoever the sale of a mortgagee's right is undertaken except when it can clearly be shown that the sale takes place (e.g.) under O 21 C.P. Code. Where no receiver in insolvency is appointed and no receiver is conferred on it by

—S 54—Assignment of rents and profits of land—Registered instrument if necessary. See T P ACT SS 58 AND 59 1940 Rang L.R. 7

—S 54—Oral sale of immovable property—

Property Act is not in force in statutory provisions of that Act

—Scope and applicability of S 54  
ing, meaning of—Licence to sell  
if can only be by registered in

als with sales of immovable pro  
angible thing referred to in the  
to embrace those imponderables  
immovable property such as for  
The

registered instrument  
MANMOHAN DAS

—1940 A.I.J. 449=

1940 A.W.R. (H.U.) 413=413 A.I.R. 1940 All 458

—S 55 (3)—Construction—Land forming bla—

The use of the present tense in the opening words of the section denotes that the question whether the section is to operate or not should the will of the plaintiff was that the land should be sold and was the purchaser of the lot of greatest value of the land covered by the original conveyance. The plaintiff's

T P ACT (1882), S 55

demand for possession of the title deeds was refused by the defendants on the ground that they were entitled to retain the same under S 55 (3) of the T P Act, and

T P ACT (1882), S 58

mortgage (*Bhide, J*) WAS DEV v DHERU MAL  
BAIJ NATH. 190 I C 525=13 R.L. 175=  
42 P.L.R. 321-A I.R. 1940 Lah 291  
—Scope—Exhaustive to allowing mar-P Code

—S 58 (1) (as amended in 1929) is exhaustive

—S 55 (4)—Applicability—Movables—Vendor's lien—If exists See 1939 Dig, Col 1100 SHIVA RAO

—Ss. 58 and 59—Assignment of rents and profits of land—Registered instrument if necessary—General

no  
by  
ga  
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187 I C 848=12 R.L. 498.  
—S 55 (4)—Vendor's lien—Separate suit—Necessity—Conditional decree in vendor's suit for possession—Propriety See 1939 Dig, Col 1100 LAL & SIDHULAL 185 I.C. 166

—S 58 (b)—Simple mortgage—Personal liability—Presumption

—S 55 (4) (b)—Lien for unpaid Promissory note by vendee to vendor

Mortgage discharged by payment of lesser amount—Mortgagor vendor, if can recover the difference Where a mortgagor sells the equity of redemption to

debtors to be borne in mind The proposition, that where a contract of sale and a contract of repurchase are evidenced by a single docu

principle of the section will apply to an auction-purchaser who buys property in good faith without notice of the

—S 58 (c)—Mortgage by conditional sale or and-out sale—Test—T—of interest—Trans

at before it was  
ation should be  
ck his property  
with interest at  
e fixed and that  
a payment at  
nt and out sale  
(*Iqbal Ahmad*)  
SHTO NATH  
=12 R.A. 595=  
L (H.C.) 147=  
1910 AIL 227.

## T. P. ACT (1882), S 58

JAGANNATH

—S 58(c) Proviso

1939 Dig., Col 1104 SAHEBA DEOCHAND v JAGAN  
NATH 187 IC 594=12 R.N. 292=AIR 1940 Nag 84  
—S 58(e)—English mortgage—Rents and profits  
—Mortgagee's right to upon foreclosure—Receiver

position of the mortgagee under the Indian law, so far as the right to the rents and arrears of rent is concerned, is

redemption, the mortgagee is entitled to the rents collected by the receiver since the date finally fixed for redemption and to the arrears of rents which

—S 58(f)—Documents of title—Factory—Map of properties and unimportant letter See 1939 Dig., Col 1105 PEOPLES BANK OF NORTHERN INDIA, LTD v FORBES, FORBES CAMPBELL & CO

186 IC 317=12 R.L. 379  
—S 59—Attested—Meaning of—Scribe if and when could be an attesting witness as well See T. P. ACT, SS 3 AND 59—ATTESTED

1940 Rang L.R. 199  
—S 60—Oral mortgage—Suit for redemption—Maintainability—Proper remedy of mortgagee See 1939 Dig., Col 1105 MAUNG LU PE v MAUNG SAN NYA

186 IC 69=12 R.L. 244= AIR 1940 Rang 11 (F.B.)  
—Sg 60 and 82—Applicability and scope—Landlord taking mortgage of half-share in tenure and obtaining decree on mortgage—Sale—Purchase by land

## T. P. ACT (1882), S 60

ie of the sale, and the landlord himself became purchaser of the half share. Thereafter he applied to the court to set aside the decree against the half share of the appellants for the full amount of the sale.

Held, (1) that the decrees should be deemed to have been satisfied to the extent of one-half only and not wholly, (2) that the fact that the whole amount of the rent charge was notified in the sale proclamation relating to the sale of the half share did not result in the whole

in execution and leave the other portion of the rent being that if the whole charge is sought to be enforced against either of the properties the holder of that property would have the right of redemption to the extent of one-half against

(4) that the landlord's claim for contribution in a separate suit but could not (5) that it was the Courts duty in a proceeding like this to give effect

—S 60—Clog on redemption—Stipulation in later mortgage that mortgagor would not be entitled to possession of property mortgaged under an earlier usufructuary mortgage unless sum due on later deed is paid—Effect of

Where the mortgagor stipulates that he would not be entitled to get possession of the property mortgaged under an earlier usufructuary mortgage unless he paid the sum due under the later mortgage deed, the second mortgage, in effect amounts to a usufructuary mortgage though the deed does not say so, and does not constitute a clog on equity of redemption (Ismail, J.) RANGULI v PEAREY LAL

186 IC 515=12 R.A. 408= 1939 A.W.R. (H.C.) 872=1939 A.L.J. 1056= AIR 1940 All 101.

OLD S. 60, T. P. CODE, can in the context only mean the interest of the mortgagor outstanding after the creation

## T P ACT (1882) S 69

affect the right of contribution which the owners of several portions of the mortgage will have under the law, and the fact that third parties are interested in the property would not affect the right of the mortgagee to do so (*Venkataramana Rao and Kunkhi Raman JJ*)

of limitation—Entry of mortgage

default of redemption within period fixed

Where a mortgage provided for redemption after a period of two years and further provided that in default

## T P ACT (1882) S 73

the profits made by him, over and above his outlay on the improvements and interest thereon (*Bhude J.*)  
WASU RAM v MOHAMMAD RAMZAN 188 I O 670=  
13 B L 29=42 P L R 186=  
A I R 1940 Lah. 199

retrospective—If governs mortgage executed before its introduction

S 65 A of the T P Act has no retrospective effect

period fixed in the deed (*Bennett J*) RAM DATTA v MAHOMED HUSAIN KHAN 190 I O 828=

S 6  
apply

legal right of redemption the mortgagor in cases where the right of consolidation is still applicable is only allowed to exercise his equitable right of redemption of

to sue for entire amount in case of default of payment of two consecutive instalments—Default—Mortgagee—

to sue for whole amount—Suit and decree for instalments alone—Sale—If free of balance  
Dig Col 1107 SUBBAYYA v VENKATA 1939 M W N 1239=  
A I R 1940 Mad. 296

ability—Two successive mortgages—Amount on later mortgage than that on first mortgage—to the earlier mortgage—Priority, if can again be sold on the first mortgage

Where there were two successive mortgages in favour of the same mortgagee, but the money on the second

Ss 63 and 63 A—Rents and profits—Duty of

Ss. 69 and 70—Applicability—Accession—Mort

on site—Site subsequently acquired as part of ANARAYANA-

13 B L 125  
Siv 1937 Ind  
PILHARI LAL  
2 Cal 251=  
12 B C 633.  
red property  
pt to

property is in his possession only by way of security and not as an investment and there is no justification for allowing the mortgagee to retain anything more out of

compensation amount

Where a portion of the mortgaged property was acquired by Government under the Land Acq.

## T. P. ACT (1882), S. 76.

mortgagee would be entitled under S. 73 (2) of the T. P. Act to claim the whole of the if the mortgage charge exceeds

J. IBRAHIM v. FAUJA SINGH

—Ss. 76 and 77—Applicable

for the purpose of the Act

A usufructuary mortgage deed provided that out of the rents and profits of the mortgaged property, the mortgagor should pay to the mortgagee a sum of Rs. 100 per annum, to be paid every year on the 1st day of the month of Chaitra. The mortgagee was to be entitled to receive the same as money. The mortgagee was to be entitled to the possession of the property for the purpose of receiving the rents and profits due. But the decree was not duly executed and became unenforceable owing to lapse of time. In a suit for redemption by the mortgagor, the latter claimed the benefit of the unpaid rents, while the mortgagee pleaded that the latter was not entitled to claim an adjustment of the unpaid rent.

Held, (1) that to the extent to the jennu as rent according to deed S. 77, T. P. Act could not create statutory liability to account mortgagee in possession, and as they fell due every year she was entitled to claim against the debt due to the claim of the mortgagor for the unpaid rent. (2) that the jennu was not a claim to set off so as to disentitle him to the benefit of so much of the amount as

PARU ANNA 1940 M W N. 55=51 L W 617=  
A I R 1940 Mad. 686=(1940) 1 M L J 693.

—S. 76—Applicability—No

Act.

S. 76, T. P. Act, does not

—S. 76—Liability to keep account—When arises

Once it is found that a person has entered into possession of the property as mortgagee, he is liable under S. 76, T. P. Act, to keep account of the rents and profits received by him, and to pay the same to the mortgagee. In the case of a usufructuary mortgage, the mortgagee is entitled to the possession of the property for the purpose of receiving the rents and profits due. But the decree was not duly executed and became unenforceable owing to lapse of time. In a suit for redemption by the mortgagor, the latter claimed the benefit of the unpaid rents, while the mortgagee pleaded that the latter was not entitled to claim an adjustment of the unpaid rent.

on lease  
payer  
wards

of rent and right to recover it becoming time-barred—  
Mortgagee's right to recover interest.

agreed that though the mortgagor had taken possession of the property on rent the income actually

## T. P. ACT (1882), S. 78.

the mortgagee would be given credit for and that if the mortgagee would be entitled to the whole of the if the mortgage charge exceeds

mortgagor himself. It was he who was to pay rent at the time when the mortgage was made. The mortgagee could not claim the benefit of the unpaid rents, while the mortgagor pleaded that the latter was not entitled to claim an adjustment of the unpaid rent.

—S. 76(c)—Rent paid by mortgagor—Mortgagee's liability to account—Redemption suit

If in a suit for redemption of a mortgage with possession, the mortgagor calls upon the mortgagee to account for the amounts paid by him as rent which the mortgagee has received, the mortgagee is liable to account for the same.

voluntary, the mortgagor would be entitled to a money order for three years' limitation. There to pay interest. SHEO SHANKAR =189 I C. 109= A I R 1940 Pat 579.

—S. 78—Gross neglect—Meaning—Mortgagee

M, it had been expressly mentioned by the mortgagee that his house was free from incumbrance. Further to every mortgagee subsequent to M the title deeds were given along with possession. M however had allowed

—S. 78—Mortgagee allowing mortgagor to remain in possession as tenant—If guilty of negligence.

A mortgagee who allows the mortgagor to remain in possession as tenant is not liable to account for the rents and profits received by him.

## T. P. ACT (1882) S 82

—S 82—"Contract to the contrary"—Contract between assignee from mortgagor and purchaser of part of equity of redemption from the assignee—Undertaking by purchaser to discharge whole debt—Effect—Subsequent purchaser from such purchaser—Right to contribution

A contract to the contrary within the meaning of S 82 T P Act, need not be between the mortgagee and the mortgagor. Where the mortgagee assigns the equity of redemption to the mortgagor and the mortgagor assigns part of the equity of redemption to the purchaser from him.

by that contract and hence he too contribution from the other mortgage hands of the mortgagor's as  
PATTABIRAM REDDI v VENKA  
1940 M W N

—S 82—Contribution—Land share in his tenure subject to rent against whole tenor other half—If he charged or exting contribution See

—S 83—Cont

—S 91—Puisne mortgagee purchaser—Suit by prior mortgagee on his mortgage without impleading former—Effect—Decree and sale—Right of puisne mortgagee purchaser to sue for redemption—If lost—Dismissal of application to set aside sale under O 21, R. 69—If bar to suit See C P CODE, S 47.  
ILLR (1940) Kar 447.

express any opinion on the question (Lord Romer)  
JANKI NATH ROY v PRAMATHA NATH MALIA

## T P ACT (1882), S 92

—S 92—If retrospective See 1939 Dg Col 1117

with in the sections enumerated in S 63 of the T P Amending Act have retrospective effect S 92 is not one of those sections enumerated in S 63 and hence

of a mortgage must pay the entire amount of the incumbrance in question Payment of a portion of the incumbrance is not sufficient Such a qualification of the right of subrogation applies whether the right be claimed under the statute or under the pre-existing law.  
(Lord Romer) JANKI NATH ROY v PRAMATHA NATH MALIA 67 LA 82-ILLR (1940) 1 Cal 231-

42 P L R 432-186 L C 1-1940 O A 96-  
21 Pat L T 69-51 L W 116-44 C W N 261-  
1940 A W R (P C) 25-1940 P W N 132-  
1910 O L E 104-71 C L J 67-  
12 R P C 128-6 B E 339-  
1940 A L J 530-ILLR (1940) Kar (P C) 82-  
42 Bom L R 339-1940 O W N 23-  
10 P C 53-  
416 (P C.)

of and effect of and earlier of prior

**T P ACT (1882), S 92**

rogated to the position of a prior mortgagee has the same rights as that mortgagee. In other words he can not only use the earlier mortgage as a shield but also enforce the rights of the earlier mortgagee. If the case, however, falls under the third paragraph of S 92, then all that is necessary is that the mortgagor should have

—(as amended in 1929) § 92—Scope—Retrospective operation of—Transactions effected before 1st April, 1930—If affected

(*Fast Ali and Dhote JJ Manohar Lal, J. dissenting*)—S 92 of the T P Act, as amended in 1929, has retrospective operation in regard to transactions effected before 1st April 1930 except in cases pending on that day and except as to rights and liabilities arising before 1st July, 1882 when the T P Act came into force.

*Manohar Lal J*—S 92 T P Act, does not apply to transactions which were concluded before 1st April 1930, irrespective of the fact whether they were or were not the subject of any pending action on 1st April 1930

—S 92—Subrogation—Conditions necessary for claiming—Later mortgage crediting amounts to an earlier mortgage—Later mortgagee, if subrogated to rights under earlier mortgage

According to S 92 Transfer of Property Act, before a subsequent mortgagee can claim to be subrogated to the rights of a prior mortgagee to whom money has

T. P. ACT (1882), S 100

—S. 92, para. (3)—*Applicability—Redemption of mortgage with money obtained from mortgagee himself.*

Paragraph (3) of S. 92 of the T. P. Act does not refer to a mortgagee whose mortgage has been redeemed by the mortgagor with money

ACHAR-  
825—  
at 64.

applies where the mortgage has been redeemed. The words in the section "mortgage has been redeemed" refer merely to the payment off of the mortgage-money and not to an extinction of the mortgagee's rights over the mortgaged property. If such rights had become extinguished there would be none to which the person advancing the money would be subrogated. The fourth paragraph moreover seems to contemplate that a mortgage may be redeemed in part and this clearly shows

—S 100—Amended section—If has retrospective effect See 1939 Dig Col 1114 RAI INDRA NARAIN v MAHOMED ISMAIL I L R (1939) All 885= 12 B A 337=185 I O 597

—(as amended in 1929), S 100—Applicability,  
decree after 1929—If  
• Question of notice—If

ct, as amended in 1929, went to 1929, the question is whether the property in the hands of a charge is created by a difference. There is no charge created by a act. In either case the of an interest in the the parties is none the voided in a decree. A

charge created by a decree in pursuance of an agreement between the parties would therefore be a charge created by act of parties contemplated by S 100 T P Act, and the question of notice is therefore relevant and material

— — — — — JJ) BASUMATI KUAR v  
21 Pat LT 783  
1940 F W N 818

\* *Discability*—Charge created by decree P Act is limited in its application to act of parties or by operation of

*"your mortgages"*

The privilege conferred by S. 92 is not confined to the first person only who redeems the prior mortgagee and can be inherited by his successors in interest.

## T. P. ACT (1882) S 100

law As such it cannot apply to a charge created by a decree if it is neither created by act of parties nor could it be said to have been created by operation of law (*Stone C J and Bose J*) GHASIRAM v KUNDANEI 1940 N.L.J. 1 = A.I.R. 1940 Nag 163

—S 100—Application—Sale in execution of decree on simple mortgage—Purchase by mortgagee decree holder—Maintenance charge in favour of Hindu female—Enforceability against purchaser—Pia of bona fide purchaser without notice—Sustainability—Simple mortgage without notice—If protected

—S 103 of the Transfer of Property Act does not apply to auction sales held in execution of a decree the reason being that a sale in execution is not a 'transfer' within the meaning of the Act and what is sold in a Court sale is merely the right, title and interest of the judgment-debtor, so that the auction purchaser can be in no better position than the judgment debtor himself. Where property subject to a charge for maintenance in favour of a Hindu female is sold in execution of a decree on a simple mortgage and is purchased by the mortgagee decree-holder himself he cannot claim to have purchased the property free from the maintenance charge on the ground that he has purchased it bona fide without notice, and that therefore the charge cannot be enforced against the property in his hands, under S 100 Transfer of Property Act. Nor can the mortgagee purchaser fall back on his original mortgage because as a simple mortgagee, he cannot by any stretch of imagination be considered to have the property in his hands as contented by S 100 (*Hornell, J*) SURAYYA v VEN FATAKAMANAMMA. 1940 M.W.N. 341 = A.I.R. 1940 Mad 701 = (1940) I.M.L.J. 831

—S 100—Auction purchaser—If can claim benefit of a bona fide purchaser. See 1939 Dig. Col 1115 RAJ INDRA VARAIN v MAHOMED ISMAIL. 185 I.O. 597

—S 100—Charge created by decree—Later sale of the property—Right to possession—Remedy of the charge holder. See 1939 Dig. Col 1115 BADRIDAS LALCHAND v PRATAP GIR. 188 I.O. 23 = 12 B.N. 201 = A.I.R. 1940 Nag 8

—S 100—Charge—Essentials  
No particular form of words is necessary to create a charge all that is required is that there must be a clear intention to make the land a security for payment of money (*Mukherjee and Roxburg*) NATH BANERJI v SABA MANGAL. 186 I.O. 8

—S 100—Charge—Riquettes—Instruction of document  
41 O.W.N. 221 = A.I.R. 1940 Pat 633 (P.B.)

What is essential to the creation of a charge is that immovable property must be made a security for the payment of money in such a way that the transaction does not amount to a mortgage in the Indian law sense. Where a person by a document undertakes to give a charge bond in respect of a liability to get sanction for the transfer of *etc* and also not to assign certain property until the above are carried out the only possible purpose of the last undertaking is to segregate a particular property so that it would be answerable in his hands if he should fail to give the charge bond and that makes the property a security for the payment of money and a charge is thereby created (*Stone, C J and Bose J*) DATU BHAIROPRASAD v JUDAL PRASAD. 1940 N.L.J. 651

—S 100—Construction—So far as may be—Meaning and effect—Deed of charge—Necessity for registered deed attested by two witnesses. See 1939

## T. P. ACT (1882) S 106

Dig. Col 1116. SHIVA RAO SHUNMUGHASI NIARA SWAMI I.L.R. (1940) Mad 306 = 187 I.O. 243 = 12 B.N. 695 = 1940 M.W.N. 343 = A.I.R. 1940 Mad 140 (1940) I.M.L.J. 922

—Ss 100 and 89—Distinction between. See T. P. ACT ss 39 and 89. 1940 R.D. 1

—S 100—Property subject to recurring charge—Sale of, in execution of decree for arrears in respect of sum charged—Liability in respect of future payments—If extinguished. See C.P. Code, O. 34 R. 15. A.I.R. 1940 Cal 60

—Ss 100 and 2 (d)—Scope and effect of amendment of S 100—Effect of S 2 (d)—S 100 if applied to Court auction sales

The amendment to S 100 T. P. Act introduced no change in the law as it stood before the amendment. The amendment was intended merely to clarify the legal position. There is no warrant for confining the operation of the saving provision of S 2 (d) of the Act to Ss 85 to 90. The saving provision is perfectly general in its terms and in virtue of it S 100 as amended applies to transfers by auction sales in execution of decrees (*Thom C J and Ganga Niah J*) MUNI CIPAL BOARD CAWNPORE v ROOPCHAND JAIN. 1940 A.W.R. (H.C.) 466 = 1940 A.L.J. 560 = A.I.R. 1940 All 456

—S 101—Applicability and construction—Mortgagee purchasing mortgaged property pending attachment in execution of money decree—Mortgage—If extinguished by sale—Right of mortgagee to fall back on mortgage—Keeping alive—Intention—Presumption of. See 1939 Dig. Col 1116 MAHALAKSHMI v SOMA RAJU. 189 I.O. 17 = 23 B.N. 114

—S 101—Suit by subsequent mortgagee to enforce his mortgage—Redemption of earlier mortgage, if obligatory—Rights of earlier mortgagee purchasing equity of redemption. See 1939 Dg. Col 1117 HARI RAO v MUNSHI SINGH. 185 I.O. 126 = 12 B.N. 301

—S 105—Construction—Right to enjoy such property—Meaning of

The right to enjoy such property which is spoken of in S 105 means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject matter of the lease is coal land it can only be enjoyed and occur. See by working it as regulates fully the d. lessees in India. anokar Lal J.J. B & O v KUMAR

1940 I.T.R. 563 = 21 Pat. L.T. 897 = A.I.R. 1940 Pat 633 (P.B.)

—S 106—Nature of tenancy—Construction of rent note—Agreement to pay rent every month and to vacate in default of payment for 3 months. See 1938 Dg. Col 1322 ABDUL RAZAK v SETH NANDALAL. 185 I.O. 284 = 12 B.N. 201 = A.I.R. 1940 Nag 269

—S 106—Notice—Lessee from month to month allowed to construct building—Ejectment—Notice to quit—Necessity. See 1939 Dig. Col. 1117 JADU NANDAN DAS v MT MAHO. 185 I.O. 284 = 12 B.N. 201 = A.I.R. 1940 Nag 269

—S 106—Notice to quit or pay enhanced rent—Failure to quit—Liability to pay enhanced rent—When arises  
6 B.R. 148 = 12 B.N. 337

Where a notice to quit or pay enhanced rent is issued to a tenant, and he refuses to quit it does not necessarily follow that he is bound to pay the enhanced rent from the date of the termination of the tenancy. He may be entitled to remain for some reasonable time as



## T P ACT (1882), S 106

in the case of a shop keeper who has been in a particular place for a long time. In such a case, he will be entitled to

## T P ACT (1882), S 108

1910 O.L.R. 615 = 1910 O.W.N. 812 =  
1910 E.D. 407 = 1910 A.W.R. (O.C.) 408 =  
1910 O.A. 801 = A.T.R. 1910 Oudh 425.

ed to S 107 of  
hich was sub  
nt of 1904, is  
a government  
to writing and  
Court of law.  
ZUBEDA  
AMLIJ 148

Tenant under invalid lease—Possession of—Co  
tre of

ct applies only  
jured by S 107  
a lease is not  
S 107—  
for registration  
ABDUL RAHIM

leases  
Transfer of  
plicable to  
he Act, in  
fecting an  
s of Ch V  
of justice,  
Sattar, J.)

—S 106—Tenant entering  
oral agreement—Possession conti  
rent—Purpose neither agricultural

10 18010 201-0 B.L. 145-  
12 R.P. 337.

Lease—Assignment—Privy of estate—  
actual possession by assignee—If condi-  
liability for rent  
of privy of estate is applicable in India  
lication of the doctrine all that is neces-

## —S 107—Applicability—Rent deed

A rent deed does not fall within the purview of  
S 107 of the Transfer of Property Act, in view of the  
definition of lease in S 105 of the Transfer of Prop-  
erty Act (Abdul Rashid J) KISHORI LAL v

taken is immaterial. The mere fact that an assignee  
from the lessee does not take any effective step to  
obtain possession or to realise his share in the profits of

landlord's right  
assignee Actual  
's and Chatterji,  
BAHADUR v  
19 Pat 483 =  
3 1910 Pat 516

not require registration, though it may amount to a  
lease under Registration Act S 2 (7) (Gruer, J) TUL

tenance—Sub-lease by lessee of remainder of term—  
Demand for arrears of maintenance left unpaid by  
—Payment by sub-lessee—Right to deduct from  
rent—Covenant for quiet

purposes—Text to be applied—Lease of shops in a city  
together with zamindari rights—Registration—Neces-  
sity

was subject to a main  
tenance charge in favour of a Hindu widow to the res-  
pondent for a term of five years on an annual rent of  
Rs 125 commencing from 13-5-1926 R himself  
undertaking to pay the maintenance to the widow  
On 4-8-1928 the respondent sub-leased the property  
under of the term R was

cultural purposes and ti-  
(Zia ul Hasan and Jora  
MST IOBALUNVISA

T P ACT (1882) S 108

her up to 21—1—1930 and the appellant paid her Rs. 215 exchange which was executed on 20—2—1916, excluding

*Held* (1) that since the respondent was bound to secure quiet enjoyment of the leased property to the appellant, and since default of payment of the maintenance

quently so far as it related to the payment of Rs. 215 which represented arrears of maintenance due in respect

T P. ACT (1882), S 123

gage, and the mortgagee got a decree in execution of which some items of B Schedule were sold in Court auction to a third party who dispossessed the plaintiff on 27—2—1931. Thereupon the plaintiff filed a suit claiming expressing his willingness to accept the B Schedule lands

no better title than the transferor and the second defendant must therefore be deemed to have taken the lands subject to the liability

sity See 1939 Dig, Col 1120 SAHEB DIN v GAURI SHANKER 15 Luck. 92 = A.I.R. 1940 Oudh 92

—S 112—Acceptance of rent falling due after breach of covenant—Waiver of forfeiture

Under S 112 of the T. P. Act, the acceptance of rent falling due after the breach of a covenant on which a lease was reserved and with notice thereof,

—S 123—Gift of movables—Conditions—Person owning assets in business crediting amounts in accounts in favour of relatives—Effect—If creates gift or trust in respect of amounts in favour of such relatives—Trusts Act, S 6.

A gift of movable property, unless it is effected by a registered deed, can only be completed by the delivery of

44 O.W.N. 1109.

—S 114-A—Applicability to Dig, Col 1120 MAHOMED OF STATE

—S 114-A—Retrospect Col 1120. MAHOMED HUS OF STATE

—S 117—Applicability—Test See T P. ACT,

words or acts (1) an intention on his part to create

moneys are credited does not raise a presumption that

## T P ACT (1882), S 128

if it can only be completed by

books cannot complete the gifts, because what the law requires for completion is never carried out. In such

## TRUSTS

merely evidence of the deposit and does not amount to a valid assignment of the policy and confers no rights on

1910 M W N 1185 = (1940) 2 M L J 963

—S 128—Universal donee—Liability to pay debts of donor

A universal donee is on the principle embodied in S 128 of the T P Act, liable to pay the debts of the donor out of his estate in his hands (*Tek Chand and Abdul Rashid JJ*) RAM SARUP v SHIV DAYAL MEHRA 190 IC 463 = 13 RL 162 =

42 PLR 307 = AIR 1940 Lah 285

—S 130—Applicability—Deposit of insurance

policy as

S. 130

assignment

has

of transfe

the deposit is being made with the intention of creating a title in the person with whom the deposit is made (*Lort Williams J*) KALI MOHAN SHAHA v EMPIRE OF INDIA LIFE ASSURANCE CO 44 C W N 593

—S 130—Assignment—Deposit in Bank authorising Bank to pay future subscriptions payable by him for a club fund conducted by a company—Effect—Trust—If created—Bank going into liquidation

JAS JAMNADAS v FRIENDMAN'S DIAMOND TRADING CO, LTD 188 IC 878 = 13 RL 95

—S 130—Debt—Assignment of—passes See 1939 Dg, Col 1122 NATIONAL BANK SUBSIDIARY CO, LTD Q BANK, LTD AIR 1940 Mad. 258

—S 130—Debt—Assignment of part—Validity See 1939 Dg Col 1122 TRAVANCORE NATIONAL BANK SUBSIDIARY CO, LTD v T N & Q BANK, LTD AIR 1940 Mad 258

—S 130—Hypothecation of actionable claim—If assignment

The hypothecation of an act a deed of assignment under S with a chose in action by way assignment (*Fort and Manoh. Sarda v SAILAJA KANTA M* AIR 1940 Cal. 603)

—S 130—Part of debt—Assignment of—Validity. See T. P. ACT, Ss 6 AND 130 18 Pat 839

—S 130—Transfer—Pledge of life insurance policy with creditor—Effect—If operates as assignment

—S 130—Scope—Fixed deposit receipt for amount deposited in Bank—Assignment—Essentials of—Endorsement on back and delivery—Effect of—Receipt—If negotiable instrument See 1939 Dg, Col 1122 ANANTARAMAN v OFFICIAL LIQUIDATOR, T N & Q BANK 187 IC 531 = 12 RL 730 =

AIR 1940 Mad 157

—S 137—Negotiable instrument—Oral assignment—Validity—Punjab See 1939 Dg, Col 1123 RAM RATTAN v GOBIND RAM ILR (1940) Lah 84 = 185 IC 426 = 12 RL 289 = 42 PLR 366

TRUSTS—Accounts—Suit for by cestui que trust, against legal representatives of deceased trustee—Decree in latter's favour—If can be passed

A trustee is bound to account to his cestui que trust, and if a suit for account is brought by the cestui que trust against the trustee the latter can ask for a decree to be passed in his favour in that very suit if he is in legal repre

13 IC 140 = 11 CLJ 215 = 44 C W N 304 =

AIR 1940 Cal 337

course for trustees—

in giving directions

1124 AMEENA BEE

AIR 1940 Cal 246

186 IC 188 = 12 RL 246

—Breach of trust—Death of trustee—Survival of cause of action

If a deceased trustee had been guilty of negligent acts or omissions or wilful defaults, the loss occasioned by such acts and omissions must be made good from his assets in the hands of his legal repre

—L apart for religious purposes—Divesting of title by owner and recognition of title in duty—Effect of

## TRUST

A person who was the absolute owner of immovable property in a written application to the collector stated that he had set apart the property as a perpetual gift to a person and asked that a certificate should be issued showing that the title to the property was in the deity. An application was granted and a deed was drawn up executed by him as the trustee of the property in the deity by which he covenanted for himself and his executors, administrators, personal representatives and assigns to pay the land tax to the Secretary of State for India.

Held that the documents clearly showed that the owner had devoted himself and a personal interest in the property and that the title was in the deity and there was therefore a completed devotion. The fact that it was not known whether the settlor utilized the income for the trust purposes did not matter as there was a complete divestiture. (*Leach C J and Aunshi Aunsi J*) GOKLIDHVS JUMNADROSS & CO v IAKSHI INARASIMHA CHETTI

1910 M.W.N. 907—A.I.R. 1940 Mad. 920

(1940) 2 M.L.J. 409

—Duties of trustee—If an be abrogated by agreement

Some of the fundamental duties of a trustee are to get in the trust property and to manage the trust as a prudent man of business. He must exercise his powers also like a prudent man of business. Where he has a discretion he must exercise it in a bona fide and intelligent manner. It is doubtful whether those duties can be abrogated or diminished by an agreement between the creator of the trust and the trustee. (*Mitter and Roxburgh JJ*) SRIS CHANDRA NANDY v SUPRAVAT CHANDRA

I.L.R. (1940) 1 Cal. 372  
190 IC 295—13 B.O. 140—71 C.L.J. 215—  
44 C.W.N. 304—A.I.R. 1940 Cal. 337

—Duties of trustee regarding investments

It is the duty of a trustee to confine himself to the class of investments which are permitted by the trust and likewise to avoid all investments of that class which are attended with hazard. A person making an advance upon his own account upon the security of immovable property may no doubt be influenced to do so by the value of the security itself and partly by his estimate of the solvency and character of the borrower. These two factors may blend in his mind as it were in helping him to arrive at a conclusion. But a trustee may not blend these considerations together. He must not allow the character or solvency of the borrower to weigh with him so as to make his advance, in effect an advance not upon the security offered but upon a consideration of other matters which seem to make it safe not to rely upon the security alone. (*Roberts C J and Dunkley, J*) OFFICIAL TRUSTEE v MRS RAEBURN

1910 Rang. L.R. 273—A.I.R. 1940 Rang. 207

—Rights of trustee—Right of suit—Trusts not in existence

When none of the trusts created by the testator is in existence, the trustees become merely bare trustees and have no right of suit with regard to the trust property. (*Panchridge, J*) SRIKISSEN v TARACHAND

190 IC 405—13 B.O. 162—A.I.R. 1940 Cal. 228

—Rights of trustee—Right to sue co-trustee for accounts

A suit by a trustee against a co-trustee for accounts is maintainable if the co-trustee is guilty of breach of trust. (*Debyshire, C J and Panchridge J*) MAHARAJ BAHADUR SINGH v TEJ BAHADUR SINGH

190 IC 144—13 B.O. 131—44 C.W.N. 688—  
A.I.R. 1940 Cal. 416

Y. D. 1940—75

## TRUST,

—Right to trace—Trustee mixing moneys of one trust with those of others

There is nothing wrong in a man being a trustee of more trusts than one. There is nothing wrong, in itself, in his mixing the moneys of one trust with those of others or even with his own money, whether the mixture is one of cash in a common receptacle or of credit in a common banking account. So long as it is possible that his drawings from the mixed fund are proper, they will in law be deemed to be proper. The trustee cannot set up his own wrong by saying that he spent trust money on himself so long as there is in the mixed fund money of his own which he was entitled to spend on himself. Equally the presumption against wrong doing precludes the beneficiaries of trust A from showing as against the beneficiaries of trust B that their (trust A) moneys were used for the purposes of trust B so long as there were trust B moneys which might have been properly so used. Unless and until therefore there is shown to have been a breach of trust, unless and until the mixed fund has been so depleted that trust moneys must have been misapplied no question of following trust moneys can really arise. In other words the right to trace is a consequence of and cannot therefore precede a breach of trust. (*Roberts C J and Blagden, J*) SHWERONTHA S. ELECTRIC LIGHTING ASSOCIATION v U SAN HIA

190 IC 865—A.I.R. 1940 Rang. 225

—Trustee—Loan by Scheme prohibiting lending and borrowing—Person managing trust as agent of trustee advancing money for necessities of trust—Promissory note by trustee—Enforceability against trust—Contract Act S. 65—Applicability—Quantum meruit

A scheme framed by the Court for a trust provided that all borrowing from and all lending on interest to the funds of the trust is absolutely prohibited. The plaintiff who had received a power of attorney from the trustee managed the trust on his behalf receiving the income of the property and making purchases, etc. He incurred expenses on account of provisions and other necessities supplied to the trust in excess of the income for which he got promissory notes from the trustee. He brought a suit on the promissory notes and claimed a decree against the trust.

Held, (1) that in borrowing the money the trustee committed a breach of trust and the plaintiff who knew it could not be heard to say that he was enabling the trustee to perform his duty to the trust and was therefore entitled to be compensated for what he had supplied. (2) that S. 65 of the Contract Act did not apply to the case as it could not be said that there was ever a contract in the case—void or otherwise—with the trust and the so called contract was nothing more than a dishonest device of the plaintiff and the trustee to defeat the scheme. (3) that in making the promise to pay the trustee could not be said to have been acting for the trust. (4) that S. 65, Contract Act, would not apply to contracts into which persons deliberately enter, knowing that the contract cannot have any validity and is in express contravention of the rules and restrictions imposed on them. (5) that if the plaintiff had raised a plea of quantum meruit and suitable evidence had been let in, the plaintiff might have got a decree for some part of the amount advanced by him. (*Hornell J*) GOPALA-SWAMI MUDALIAR v VAITHILINGA PANDARASAN-NADHI

61 L.W. 709—1940 M.W.N. 669—  
A.I.R. 1940 Mad. 718—(1940) 1 M.L.J. 547

—Trusteeship—Succession—Founder's right to alter line of devolution

It is clear that once the founder of a trust put a line of devolution as regards the trusteeship

## TRUST

document creating the trust, the founder has no right thereafter to alter the line of devolution of the trusteeship unless he had reserved such a power in the original document itself. A founder by two documents dedicated certain properties for the charities mentioned in the documents and directed that after his lifetime 'A M', and after his lifetime his heirs should be the hereditary trustees. The document also stated, *inter alia*, that the founder had no right whatever to cancel the deed of settlement during the lifetime of A M died before the settlor.

*Held*, (1) that on the language of the provision in favour of A M and his heirs as hereditary

and did not confer on the settlor any power to make a fresh provision regarding the devolution of the trusteeship (*Somayya, J*) NALLASIVAN PILLAI v GANA PATHI MUDALIAR 1940 M W N 235=

51 L W 381=A I R. 1940 Mad 633

## trustee—Beneficiary's claim to priority

Where a trust is created and an amount of money is

## TRUSTS ACT (1882) S 77.

with the bank and the money was paid into it. One of the conditions of the account was that the amount deposited in it should not be available for withdrawal for purposes other than payment of the instalments for which the subscriber was liable in respect of the chit fund until he had paid all the instalments. At the time of the opening of the account, the subscriber had to sign a letter addressed to the bank, to the effect that as security for

payments as they fell due the necessary amount from the

trustee for the company

*Held* that there was no basis on which the bank could be regarded as a trustee for the company that there was no intention on the part of the subscribers to create a trust, that the letter signed by the subscriber

but must prove as an ordinary creditor in the bank's liquidation (*Leach, C J and Horwill, J.*) TRAVAN CORP NATIONAL BANK SUBSIDIARY CO LTD v

52 L W 488=

31=(1940) 2 M L J 566.

y—Essentials—Amounts of relatives by owner of 23

52 L W 726.

Loan by trustee

See 1938 Dig.

DEO RADHA

1940 Nag 94

—Temporary investment

are—Duty of trustee See

JDPA BAI v SHRI DEO

ILL E (1940) Nag 94.

property—Meaning

of the Trusts Act, the

## TRUSTS ACT (II OF 1882) S 6—Trust of mov

value of the property does not mean what would be

beneficiary and (d) the trust property, and (unless the trust is declared by will or the trustee transfers the trust to himself to be the trustee) trans the trust to a company was purpose of organising chit fund shares in the company except

Trust created, when extinguished—Demand for return of deposit if shareholder is not an agent

operating as a revocation of

performance of the trust

//) DINSHAW & CO r.

1940 O A 891=

433=1940 O W N 1022.

## TRUSTS ACT (1882), S. 88

—Ss 88 and 90—Applicability—Application for  
darkhast grant—Fa  
tree—Death of app  
tion by widow for  
for or for benefit of  
arbit of husband

A applied on  
piece of land  
money for the v.

## U P AGRI. RELIEF ACT (1934) S 2

—S 94—'Beneficial interest'—Meaning of—  
t—Coparcener undertaking  
debt of another coparcener  
red  
"it" as used in S 94 should  
not be given any restricted or technical meaning The

"it demands (Stone,  
AO v BHUPENDRA-  
I.R. 1910 Nag 149

(XXVII of 1934)  
Court of Wards Act (IV of 1912).  
District Boards Act (X of 1922)  
Encumbered Estates Act (XXV of 1934)  
Encumbered Estates (Amendment) Act (XI of  
1939)  
Government Rules re assessment of alluvial  
mahals  
Land Records Manual  
Land Revenue Act (III of 1901)  
Local Rates Act (I of 1914)  
Medical Act (III of 1917)  
Municipalities Act (II of 1916)  
Partition Manual (1939)  
Prevention of Adulteration Act (VI of 1912).  
Regularisation of Emissions Act (1935)  
Regulation of Sales Act (XXVI of 1934)  
Revenue Courts Manual  
Stay of Proceedings Act (1937)

husband's estate for obtaining the grant from the  
Government, she could not be held to have gained an  
advantage in derogation of the rights of the persons  
interested in the property left by her husband and the  
creditors of her deceased husband were not 'persons  
interested' in the property (4) and the property  
acquired by the widow under the grant was her own  
property and not liable to attachment and sale in execu  
tion of the decree against her husband (*Abdur  
Rahman f*) NATIANCAI v ARASAPPAPILLAI (PATTI  
'CO-OPERATI'

—Ss 81  
structive trust

Ss 88 and  
the sense tha  
these sections, and held liable as a trustee, he must be  
found to fall under the residuary S 94 In other  
words where no trust has been declared a person would

having a share in ancestral property—Father's name  
only appearing in khewat  
Expl (u) to sub S (2) to S 2 of the UP Agricul  
Relief Act only restricts the benefit of Ch II

—S 94—Applicability—Constructive trustee—  
Who is See TRUSTS ACT, SS 88 AND 90

1940 M.W.N. 76

779  
a share in an ancestral property and whose share of the  
revenue is less than Rs 1 000, whose father's name  
is entered in the khewat, is entitled to the  
S 5 of the Act (*Yoke, f*) RAZA

## U. P. AGRICULTURE ACT (1934), S. 2

KERY SARAN

1940 E.D. 595 = 1940 O.A. 1155 =  
1940 O.W.N. 1219

S. 2 (2) — Proviso 1, Explan. VII — Scope

Permanent Settlement Regulation I of 1795 or holds lands free of revenue and pays both and local rate the aggregate amount of exceeds Rs. 500. The term 'explanation' been wrongly used to what has been enacted in Explanation VII to S. 2 (2) and it is more, like a 'provision' and when there is no specific provision excluding the same, the decree is passed under S. 33 of the U.P. Agriculturists' Decree Act, 1934.

194  
1939

S. 2 (2) (f) — 'Agricultural land' meaning of — Grove land, of agricultural land.

The expression 'agricultural land' in Cl. (f) of sub-section (2) of S. 2 means land which is used for agricultural purposes.

tural'. Grove land cannot be said to be 'agricultural land' (Iqbal Ahmad, Allotment and Verm).

S.  
lity — Str.  
CULTURE  
PROVISIONS.

Ss 2 proviso (3), 3 and 30 — Joint family — Mortgage by father and son — Benefit of and 30 — Availability — Father alone entered as proprietor — If affects the question See 1939 Dig. 1126. BANGALI MAL v. BANSIDHAR.

S. 2 (8) — Interest — If includes profits derived from property usufructually mortgaged. See U. P. AGRIC. REL. ACT, SS 33 AND 2 (8). 1940 A.L.J. 615.

## U. P. AGRICULTURE ACT (1934), S. 7.

rights See UNITED PROVINCES AGRICULTURISTS' RELIEF ACT, SS. 7 AND 2 (10) (b) AND (c)

1940 A.W.R. (H.C.) 64

U. P. Agriculturists' Decree Act, 1934, over all 'decree' for relief of agriculturists, S. 33 of the Act, which provides that no decree shall be passed against an agriculturist for any debt incurred by him for agricultural purposes, unless the decree is for a specific sum of money and when there is no specific provision excluding the same, the decree is passed under S. 33 of the U.P. Agriculturists' Decree Act, 1934.

194  
1939

S. 3 (1) — Instalments — Discretion of Court See Dig., Col. 1126. LALTA v. AVADH NARESH

15 Luck 68 = A.I.R. 1940 Oudh 59

S. 3 (2) — Creation of charge under — Valuation of — Fair rate. See 1939 Dig., Col. 1127.

F. LAL v. RAGHURAJ SINGH.

7 I.C. 345 = 12 R.A. 525 = A.I.R. 1940 All 22

of — Future interest — Rate — Discretion of Court See 1939 Dig., Col. 1127.

MUKAT LAL v. 187 I.C. 345 = 12 R.A. 525 = A.I.R. 1940 All 22

Ss 4 and 30 — Future interest — If to be on amount only. See 1939 Dig., Col. 1127.

F. LAL v. RAGHURAJ SINGH

187 I.C. 345 = 12 R.A. 525 = A.I.R. 1940 All 22

Benefit of — Availability — Person having a share in the property. See U. P. AGRICULTURE ACT, SS 2 (2) EXPL. (ii) AND S. 5.

1940 O.A. 1155.

MAHOMED ABDUL HAQ 187 I.C. 885 =

12 R.O. 415 = 1940 E.D. 87 =

1940 A.W.R. (C.C.) 87 = 1940 O.L.R. 284 =

1940 O.A. 172 = 1940 O.W.N. 169 =

A.I.R. 1940 Oudh 194

S. 5 (2) — Finality of decision of appellate Court Dig., Col. 1127.

Oudh 33 (F.B.)

ment in Delhi-  
uted Provinces —  
le, S. 20 (c). See

U. P. AGRIC. RELIEF ACT (1934), S. 7.

1939 Dig. Col. 1128. HANSRAJ GUPTA v. RAM LAL BALDEO PARSHAD 185 IC 711-12 R L 317.

—Ss. 7 and 2 (10) (b) and (c)—*Claim of subrogation—Suit to enforce rights—If in respect of a 'secured loan' or 'unsecured loan'.*

Where a person claims to have been subrogated to the rights of a mortgagee whom he has paid off, and sues to exercise those rights in order to be able to realize the money claimed, such a suit is in respect of a 'secured loan'.

*Verma, J.J.*  
188 IC 1

—S 12—*Applicability, if confined to valid mortgages only—Statutory tenant mortgagor, if can apply under S. 12.*

*Hasan, J.* SANT RAM v. PUTTI LAL.  
15 Luck 535=187 IC 431=12 E.O. 380=  
1940 O L E 216=1940 R D 188=  
1940 A W R (C) 152=  
1940 O W N 352=1940 O A 316=  
A I R 1940 Oudh 263

—S 12—*Application under—Mortgagee's possession changed into ve*

Where in addition to an agreement subsequent to the execution of a mortgage deed, there is evidence to show that the nature of the mortgage is changed into a usufructuary mortgage.

—S 23—*If bars revision also*

The words that appear in S 23 of the United Provinces Agriculturalists' Act, 1929, "the Court shall be final and its decision shall be final" must be taken to be that a revision is not barred. *Verke, J.J.* LA 184 1940 A W R (C)

—S 30—*Reduction of rate of interest—If can be claimed by non agriculturist tenant*

*Iqbal Ahmad and Bafai, J.J.* FAIR

U. P. AGRIC RELIEF ACT (1934), S 33

—S 30—*Scope of—Change of compound interest into simple interest—Powers of Court. See 1929 Dig. Col 1129. MUKAT LAL v. RAGHURAJ SINGH. 187 IC 345=12 R A. 525=A I R 1940 All 22.*

—S 30 (2)—*If a decree has already been passed—Construction.*

The words 'if a decree has already been passed' in Cl. (2) of S 30 of the U. P. Agriculturists Relief Act refer only to decrees passed before the Act came into force.

proviso (iii) to sub S. (2) of S. 2—*Proviso when applies—If can be construed liberally.*

Where an agriculturist mortgagor transfers some property to a non-agriculturist mortgagee, such a transfer does not attract S 33 of the U. P. Agriculturists Relief Act, S (2) of S 2 of the

Act for the proviso can apply only when a non agriculturist 'joins' with an agriculturist in any transaction of loan. The proviso is in the nature of an exception to the definition of an 'agriculturist' contained in the Act and should, therefore, be strictly construed. A liberal interpretation should not be put on it so as to deprive a per-

\* Court fees Act, S 7(4) and Art.

—*Suit under S 33 of Agriculturists Relief Act—Court fee payable in suit and in such suit—Value of such suit.*  
33 of the United Provinces Agricul a suit for account and is not a decl nce Art 17 (iii) of Sch II to the

C

counts to a decree as it f its opinion as to the the defendant or vice a decree, if filed by the amount, and if filed by of the amount, found al is in either case an

appeal against a decree passed in a suit for account and

value of such a suit for the computation of Court fees.



## U P. AGR. REL. ACT (1934), S 33.

—S 33—Suit to declare amount payable—Court-fee payable *See* COURT-FEES ACT, S 7 (iv) (f) AND U P AGRICULTURISTS RELIEF ACT S 33

1940 A L J 36

—Ss 33 and 2 (8)—Suit under S 33 in the case of usufructuary mortgage—Maintainability—'Interest' in S 2 (8) if includes profits from such property

A suit under S 33 U P Agri Rel Act, can be filed in respect of a usufructuary mortgage in which no interest is specifically mentioned in the deed. The profits of the property usufructuarly mortgaged which the mortgagee appropriates in lieu of interest, are clearly covered by the definition of 'interest' in S 2 (8) of the Act (*Iqbal Ahmad and Verma JJ*) DIGBIJAI SINGH v BUDH SEN

1940 O W N 1139=

1940 R D 547=1940 O A 1282=

1940 A L J 615=1940 A W R (H C) 484=

A I R 1940 A H 520

—S 33—Suit under—Decree for instalments, if could be passed in *See* U P AGRICULTURISTS' RELIEF ACT, SS 3 AND 33

1940 R D 112

—S 33—Suit under—Nature of for purposes of court fees—Appeal—Valuation—Procedure in case appellant obtains relief for larger amount

Cases under S 33 of the U P Agriculturists' Relief

## U P. COURT OF WARDS ACT (1912), S 52

41 C W N 765=6 B R 594=

I L R (1940) Kar (P C) 160=1940 O L R 292=

12 B P C 169=52 L W 50=72 C L J 1=

1940 A W R (P C) 72=1940 O A 383=

1940 O W N 431=1940 A L J 333=

A I R 1940 P C 82=(1940) 2 M L J 205 (P C)

—S 8 (1) proviso Cl (a)—Gross annual profits

—Calculation of—Deduction of land revenue

Land revenue must be deducted in calculating the gross annual profits of a property, but no allowance for any expenses of estate management must be made in arriving at the gross annual profit of the property. (Lord Porter) BHAGWAN BAKSH SINGH v SECRETARY OF STATE

67 I A 197=

I L R (1940) A H 432=187 I C 646=

41 C W N 765=6 B R 594=

I L R (1940) Kar (P C) 160=

1940 O L R 292=12 B P C 169=52 L W 50=

72 C L J 1=1940 A W R (P C) 72=

1940 O A 383=1940 O W N 431=

1940 A L J 333=A I R 1940 P C 82=

(1940) 2 M L J 205 (P C)

—S 11—Wrong view as to meaning of "gross annual profits" in S 8 (1) proviso, Cl (a)—If can be challenged in Civil Court

Even if the Governor in Council showed...

## U. P. COURT OF WARDS ACT (IV OF 1912)—Power of Court of Wards to acknowledge ward's barred debts

There is no provision in the U P Court of Wards Act entitling the Court of Wards to acknowledge or pay off a ward's debt barred by time (*Zia-ul Hasan and Radhakrish*)

ANAND BEHARI LAL v DEPUTY COM

BARABANKI 15 Luck 308=185

12 R O 212=1940 A W R (C

1939 R D 635=1939 O W

A I R 1940

—S 8—Object of disqualification

The object of disqualification under S 8 is no doubt threefold—it will protect persons incapable of managing their c

the Ac

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easily

BHAG

67 L

acts creditor's remedies for enforcement of claim

There is nothing in the provisions of Ch IV the U P Court of Wards Act to justify view that remedies under the general law are suspended as soon as a claim is notified under S 17 of the Act. Nor is there anything to show that a creditor or decree-holder is precluded thereafter, from instituting a suit or executing his decree or that the Court of Wards is placed under a statutory liability to discharge

ment

be-

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12=

1940 A W R (C C) 15=A I R 1940 Oudh 107.

—S 52—Applicability—Without discharging

the liability thereof in the manner provided by

aning of.

ie U P. Court of Wards Act ap-

where the estate is released from

ndence by the Court of Wards be-

tainment of debts, and Ss 20

**U. P. COURT OF WARDS ACT (1912), S. 61.**

and 21 apply where the debts are ascertained by the Collector under Ch. IV of the Act. Ch. IV deals not with discharging the liabilities of the ward but with their ascertainment only, and the words "without discharging liabilities thereof in the manner provided in IV" occurring in S. 52 of the Act mean stand for "without ascertaining the liabilities thereof in the manner provided by Ch. I." (*Zia-ul Hasan and Radhakrishna, JJ.*) **ANAND BHAI LAL v. DEPUTY COMMISSIONER, BARRAKKAN**  
15 Luck. 308=185 I.C. 290=  
12 R.O. 212=1939 R.D. 635=

**U. P. ENCUMBERED ESTATES ACT (1934), S. 2**

When property is in *custodia legis* another Court should avoid appointing another receiver. Where a Civil Court has already appointed a receiver of the properties of an applicant under the Encumbered Estates

Who are entitled to benefits under the Act.

The benefit provided for by the Encumbered Estates Act can be given only to a person who is entitled to 4 of the Act and who does Where the landlord applies of debts a mortgage debtor under that decree

covered to be defective and the transferee is exposed to the risk of eviction by the title paramo property. An express covenant is not necessary to pose a personal liability upon the ward, for

S. 2 (a)—Liability under a mortgage, if one for

**UNITED PROVINCES DISTRICT ACT (X OF 1922), S. 35 (c)—Election Reference to District Judge—District persona designata—Appeal against his decision to High Court**

Where an objection to the election of a

**SINGH v. C**

—S. 1C  
If income tax

the any of interest enjoyed by a person landlord of the property within Where after the death

in his hands  
erty though  
Singh and  
J. KHAN v.  
O.C. 504=

of the U. P.  
plate

e l



## U. P. ENCUM. ESTATES ACT (1931), S. 7.

the creditors and the Collectors can step in at any time under O. 39, P. 1 or O. 40, R. 1, C. P. Code, by in-

*Requirements*

sold, he must deposit the necessary amount as required by this paragraph the property.  
RAV P. HADDY

—S 7—Right to apply under—Mutawalli applying under S 4, in respect of personal debt—If can ask for stay of execution against waqf estate. See UNITED PROVINCES ENCUMBERED ESTATES ACT, SS 2 (x)

—S. 7—Stay of execution—Mortgage of two items of property—Suit on and decree—Execution one of the items—Application under S 4 of the a subsequent mortgage of one of the items if a execution

Where a person mortgaged two separate item property in favour of another and a decree is obtained thereon which also treated the items a decree-holder seeks execution against only, it is not open to the mortgagor should be stayed under S 7 of the Estates Act, because a subsequent other item had applied under S 4 of the Encumbered Estates Act (*Bennet and Verma JJ*) KISHORI LAL: KALYAN SINGH 189 I O 461=13 RA 102 1940 B D 103=1940 A W R (H C) 178=1940 A L J 190=A I R 1940 All 212

—S 7 (1) (a)—Applicability—Debtor purchasing property pendente lite—If can ask for stay of execution against such property

The provisions of Cl (a) of sub S (1) of S 7 of the U P Encumbered Estates Act are subject to the rule of law enacted by S 52 of the T P C and hence a debtor applicant under the Encumbered Estates Act who has

## U. P. ENCUM. ESTATES ACT (1931), S. 7.

ceedings remain pending in that Court. Where a decree passed by a Court in the U. P. is execution to a Court outside of Courts in the U. P., the proceedings pending in the latter to be stayed under S. 7 (1) (a) Enc. Estates Act by the Court in which passed the decree. A mere giving a decree for execution does not constitute a process for the execution of her execution process' Cl. (1) (a) of S 7 of the Act, do not refer to in order. The words 'refer to processes analogous to attachment of property such as of arrest, order for sale of property, Thomas, C J. and Radhakrishna, J.) (LOCAL KISHORI. 15 Luck 270=185 I C 280=12 RO 204=1940 A W R (C C.) 23=1939 R D 628=1939 O W N. 1134=1940 O A 22=A I R. 1940 Oudh 84.

—S 7 (1) (a) and (b)—Scope of stay and prohibi-

Collector under S 6 of the Act and provides that such contemplate suits or proceedings against landlords for enforcement of debts due by them and not to suits or proceedings that the landlords themselves are entitled to institute v PRASAD :

1940 B D .

—S 7 (b)—Applicability—Lease of house property.

The provisions of sub-S (b) of S. 7 of the U. P. Encumbered Estates Act are not intended to apply to a lease of house property (T A M, C J) LIJAI SINGH

7 (b)—Strict construction—Application Encumbered Estates Act during pendency of proceedings in Civil Court—Proceedings are in pursuance of order of remand by District Court barred by S. 7 (b).

S. 7 of the U. P. Encumbered Estates Act is live of the ordinary rights given to a litigant and its provisions must be strictly construed during the pendency of a civil suit for pa

although it may be that the execution Court does not on an order of transfer lose its jurisdiction over the execution proceedings for certain purposes, it cannot be said that execution pro-

## U. P. ENCUM. ESTATES ACT (1934), S. 9.

## U. P. ENCUM. ESTATES ACT (1934), S. 9.

G. Col 1140. KAZIM HUS-  
BEGAM. 14 Luck 694.  
of—Filing of written state-  
ment of limitation—If not

S 9 of the U. P. Encum-  
provisions fixing the latest  
of written state-  
statement filed a few  
date from which the  
ation is to be made, is

of the notices under Ss 9 and  
publication of notices is unneces-  
and *Yorke, J.J.*) AZIZUR RAHM  
PIARI 15 Luck 460 = 186 LC  
1940 O.A. 213 =  
1940 R.D. 116 =  
1940 A.W.R. (C.C.) 126 = A 1

—Ss 9 and 10—*Banamidar*,  
of—Death, after filing of written statement—Applica-  
tion for substitution by heirs of beneficial owner—  
Nature of—Limitation

A benami-  
their rela-  
trustee for  
maintainance  
the property  
ficial owner  
the right to file a written statement of claim in accordance with the provisions of Ss 9 and 10 of the U. P. Encumbered Estates Act. When he has done this with

—Ss 9 (3) and 13—Effect of amendment—Power  
of Court to extend time—S. 13, when applies

On account of the amendment made in the United  
in view of S 9  
n to the special  
his claim by  
period fixed, to  
S. 13 of the

All does not apply to those cases in which an appeal or  
revision has been preferred against the decision of the  
lower Court. The provisions of S 13 will come into  
operation after the amendment of the appeal or

tion for substitution of legal representatives. (*Iqbal*

—S 9 (9)—Power to file written statement

COURT FEES ACT, S. 17 AND SCH. I, ART. 1—APPLI-  
CABILITY. 1940 O.L.R. 92.

—S. 9 (as amended by Act XI of 1939)—*Joint  
debt—Suit against the debtor not applying under the  
Act—Amendment of the Act—Procedure to be followed*

AIR 1940 Oudh 34

—S 9 (5)—Applicability—*Joint and several debts*,  
The words used in S. 9 (5) of the United Provinces  
Encumbered Estates Act, where mention is made of  
joint debtors and joint debts or joint decrees, are not  
intended to cover debts and decrees for

## U P ENCUM. ESTATES ACT (1934), S 9

LACHHMAN PRASAD 187 I O 835-12 R O 401-  
1910 O A 521-1940 O W N 610-  
1940 A W R (O

—Ss 9 (5) and 13—  
of joint as well as severa.  
a joint as well as several  
landlord, if barred

S 9 (5) of the U  
contemplates only those  
of the debtors is joint a  
the liability is joint as well as several In a case | debtors

—S 9 (b) (as amended by  
Joint debt—Application by some  
under the Act—Remedy of creditor

Under the amended U P. Encum. Estates Act, 1934,

the  
d  
the  
as  
d  
a  
A  
I

1940 A.W.R. (H.C.) 1  
A.I.R. 1940 All 148 (F

—S 9 (5) (a)—Applicability—Distinction if a  
joint claims on a pronote and mortgage debts

The plain intention  
bered Estates Act is t  
to be implied in the he  
distinction so far as S 9  
to be drawn between a claim on a pronote debt and a

## U P ENCUM ESTATES ACT (1934), S 9 A

making of an application under S 4 of the Act, does not  
exclude heirs or transferees of the original debtor

—Ss 9 (5) (b) and 14—Joint Hindu family—

Adjudi-  
d  
ination con-  
P Encum-  
uered Estates Act does not mean that the special Judge

U. P. Encumbered Estates Act does not necessarily  
mean persons who have jointly incurred a liability  
or as one might say joint borrowers. The defini-  
tion of the word debtor in connection with the

1910 O W N 1154-1940 R D  
—S 9 A—Receiver—Appointment with  
plication therefor—Priority—Consent  
S. Agency

## U. P. ENCUM. ESTATES ACT (1934), S 9 A.

There is no justification for the appointment of a receiver where there is no application for it before the

1910 E.D. 207

—Ss 9-A, 9-B, 9-C and  
*cation under S. 9-C—Maintain  
 should be still pending before sp*

The scope of the new section 9 D is as follows. S 9-A relates of a receiver only in two limited cases, namely, where there is a claim of maintenance and where there is a decree for maintenance or wages for professional services, S 9 B relates to the appointment of a receiver in respect of non landed property only S 9-C relates to the appointment of a receiver of landed property in the possession of the debtor applicant where the value of the property is being whittled away or

## U. P. ENCUM. ESTATES ACT (1934), S 9 D.

—S 9 (c) (2)—'Applicant'—To whom it refers.  
 The word 'applicant' used in Cl (2) of S 9 (c) of the does not mean the applicant the receiver but refers to the finally under S. 4 of the act.

—S. 9 (c) and (d)—Relative scope of.

—(as amended), S 9 (c)—Receiver—Appointment—Facts entitling

A receiver can be appointed under S. 9 (c) of the amended of the forate its is del es under AND LAL 80 (1)= 1940 E.D. 220 (1).

—S 9 B (3)—Receiver—If can function after decree is forwarded under S 19, to the Collector—Powers of S. D O

Under S 9 B (3) of the U. P. Encumbered Act, a receiver appointed by the Special Judge under

all an application under S 9 (c) of the Encumbered Estates Act for the appointment of a receiver it is not enough to say merely that there is no evidence that the

the case may be, to appoint another in his place, for

1940 A W.R. (B R) 226=1940 O A 1184= 1940 O W N. 1046

—S 9 (c)—Receiver—Deliberate protraction or obstruction.

Under S 9 (c), U. P. En receiver can be appointed only when it is shown that the proprietor is either managing the property in such a way as to deteriorate its capital value, or that he is deliberately protracting or obstructing the proceedings under the Act. Before it can be held t is protracting the proceedings, it should he was raising futile objections for the matters. The mere fact that the objections to the valuation prepared l hardly enough to lay the guilt of protraction at the door of the debtor for in all conscience his objections may conceivably have been thoroughly justified (Harper, S M and Sathe, J.M) RAM DULAKI t. GAYA PRASAD 1940 E.D. 335=1940 O W N. 770= 1940 A W.R. (B R) 231=1940 O.A. 1188

5 9-D  
 In no case will a creditor who has been dispossessed under S 35 of the U. P. Encumbered be entitled to receive the profits, for the acting S 9-D is not to defeat the provisions the Act by enabling the creditor to enjoy the profits of the property by indirect means The object of the section is merely to safeguard the property from may be available ne of liquidation. AHMUD KHAN v 1940 B.D. 360= 1940 O A 1004= 1940 A W.R. (B R) 182.

—S 9 (d)—Order appointing receiver—Absence of reasons—When not an irregularity

such ground (Harper S. M and Sathe, J. M) ASHTIAQ HUSAIN v AKHTAR HUSAIN. 1940 O W N 567=1940 O A 616= 1940 A W.R. (B R) 158.

—S 9 (d)—Property in respect of which receiver be appointed.





## U P ENCUM ESTATES ACT (1934), S 14

WARI PRASAD DUBE

1940 O A 1178=

1940 A W R (H O) 593

—S 14 (4) (a), (5) and (6)—*Principal—How to be ascertained—Contract or agreement contemplated by Cl (6), if should be only between the original parties*

The ordinary meaning of the word 'principal' is 'the capital sum lent as distinguished from interest'. But for

## U P. ENCUM ESTATES ACT (1934), S 26

decree is substituted in the case of an existing mortgage. Such a mortgagee is not therefore entitled to retain the property. A purchaser at an auction held after an order of the court, when a decree is given for the debt by the special judge.

RAM V SHAKDWAR

1940 B D 934

1940

tenancy

numbered  
mortgage  
guished

proceeding  
that the

when a decree is given for the debt by the special judge. The scope of the section is not limited to mortgages of

ings that are contemplated by Ch  
to be postponed simply because a  
filed against a decree passed under  
the question of the amount that is c  
M and Mehta, J M) SURAJ B.  
NAURANG SINGH

1940 B D 93=

1940 A W R (B R) 34

—S 14 (7)—*Pendente lite and future interest—If*

—S 24 (1), Provisos 1 and 2—*Scope of—Order of sale prescribed by section—Departure from—Justification*

a debtor pos-  
sumbered, and a  
liquidation of  
the mortgaged  
d sold last in  
zamindari pro  
s it was held,

1940 B D 493=A I R 194

—S 15—*Decretal debt—Interference—*

In the case of a decretal debt the only t

*Position and rights of a mortgagee and purchaser at an auction sale*

S 18 of the U. P. Encumbered Estates Act is para-  
mount. On the passing of a decree under S 14 of the  
Act all claims are extinguished and a simple money

KHAN V SHANKAR LAL

1940 B D 437 (1)=

1940 O W N 1048=1940 A W R (B R) 262 (1)=

1940 O A 1270

—S. 26 (c)—*Instalment and transfer values fixed—Retention, if justified*



## U P ENCUM ESTATES ACT (1934), S 45.

PREMIARI 15 Luck 460=186 I.C. 680=  
12 E O 328=1940 R.D. 116=1940 O.A. 213=

MOHAMMAD v. KHALIL AHMAD

189 I.C. 265=13 E O 47=1940 O.L.R. 423=

1940 O.A. 468=1940 O.W.N.

1940 A.W.R. (C.C.)

A.I.R. 1940 Oudh 335

—S 45(3) and C.P. Code S 151—*Refu*

*take action under C.P. Code, S 151—Appealabil*

S. 45(3) of the U.P. Encumbered Estates

doubt makes every order passed under the Encumbered

Estates Act appealable, but not an order refusing to take

action under S. 151, C.P. Code (*Sathe, J M*)

JAGANNATH SINGH v. DRIGPAI SINGH

1940 R.D. 515=1940 A.

1940 O.A. 1077-1

—S 45(5)—*If bars revision u*

*Code.*

Clause (5) of S. 45 of the United Provinces Encum-

## U P ENCUM ESTATES ACT (1934), S 54.

1940 A.W.R. (C.C.) 355=1940 O.A. 655=

1940 R.D. 349=1940 O.W.N. 712=

A.I.R. 1940 Oudh 433.

O 22, R 5—*Death of*  
*proceedings—Addition of*  
*be postponed*

—S 50 and C.P. Code, O 22—*If consistent—*

be regarded as inconsistent with that section of the  
Act. It necessarily follows that Art 176, Limitation Act  
will have no application to an application to add the  
legal representatives of deceased applicants under

(*Zia ul-Hassan and Yorke,*

SURENDRA SINGH

=1940 A.W.R. (C.C.) 295=

456=1940 O.W.N. 735=

1940 R.D. 343=1940 O.A. 518=

A.I.R. 1940 Oudh 394.

54—Rules—R 6 and C.P. Code, O 22—

lity of O 22 to proceedings under United Pro

curbed Estates Act—Death of a creditor—

implead legal representative within time—

See 1939 Dig., Col 1130 GOKARAN SINGH v.

IKAN SINGH. I.L.R. (1939) All 892=

185 I.C. 402=12 R.A. 319

54—R 6 of rules under—Scope of—Power

Judge to grant temporary injunction for

circumstances all  
purpose consis  
cts of the Act.  
ower to grant  
steps with a  
n wasting his  
'/.) NARAIN  
' O.A. 1175=  
' (H.C.) 691.

88—Assistant

named under  
n Assistant  
tor in respect  
(2) of R. 87.

**U. P. ENCUM ESTATES ACT (1931), R. 6.**

Hence he has authority to appoint a receiver in those cases which are entrusted to him under R. 87. (*Harper, S.M. and Sathe, J.M.*) **RAM DULARI v. GAYA PRASAD** 1940 R.D. 335-1910 O.W.N. 770-

**—R. 6**

ceedings u interested i under the parties, S ENCUMBERED ESTATES ACT, R. 6 1940 O.W.N. 716.

sanctioned—Proper forum.

such a person to come on the basis of the existing entry and ask the Court to draw an inference that because the entry is there, therefore the onus is to be placed on the other side to show how he came to be a holder of the field. (*Mehra, J.M.*) **KAMLESHAR AHIR** 194

—R. 236—Written copy of Failure not resulting in injustice—Interference in appeal, if necessary

as he thinks fit, the idea is to circumscribe his order within the framework of the severality lists and the partition proceedings at the instance of the tenant. (*Mehra, S.M.*) **SEWAK SINGH.**

**U. P. LAND REVENUE ACT (1901), S. 36.**

—S. 25—Qanungo—Duty of officers with reference to integrity certificate—Refusal on the ground that they are generally dishonest—Propriety.

Officers should act with full sense of responsibility both when they give an integrity certificate to a Qanungo they withhold one from him. But it is not refuse it on the ground that the Qanungos are dishonest as a class. (*Marth, S.M. and M.*) **ABHAI NANDAN KUMAR v. KING.** 1940 R.D. 22-1940 A.W.R. (B.E.) 14-1940 A.L.J. (Supp.) 2.

—Ss 29 and 41—Demarcation proceeding—Disability—Pendency of civil suit, after proceedings under S. 145, Cr. P. Code

Where as a result of boundary disputes, parties have resorted to proceedings under S. 145, Cr. P. Code and subsequently to a civil suit, and a civil suit is pending

**BAHADUR PAL.** 1940 R.D. 480 (2)-

A.W.R. (B.E.) 103-1940 O.A. 1019. Correction case—Long standing oral involving question of title—

under S. 33 (2) of the U.P. Land

summary pro- MAHOMED W.N. 739- O.A. 1002 application

The general rule with reference to mutation applications is that if it is once presented and is dismissed defi-

**SALIG RAM** 1940 A.W.R. (B.E.) 163

—S. 36 and Oudh Rent Act (XXII OF 1886),

the Land Revenue Act an ex-proprietary tenant may have his holding carved out at any time during the pendency of the proceedings. (*Har* and *S.M.*) **PAN PR** O.A. 1002-1003

## U P LAND REVENUE ACT (1901), S 36

—S 36—Declaration of ex proprietary rights—Subsequent procedure to be followed

When ex proprietary rights are declared the procedure is for demarcation to take place and for fixing of the separate rent S 36 of the U. P. Land Revenue Act

—S 36—Ex proprietary rights—How long subsist  
—Limitation against proprietor—Starting point—Test  
—Nature of possession necessary

before limitation can start running against a proprietor This should start as soon as the ex proprietor loses possession over what constituted his former holding. In

thereon—Amount not in accordance with requirements of binding nature of the United fixed, before

—S 39—Correction case—Entries of long standing—Alteration of

Existing entries of long standing will not be altered unless a fresh adjudication is forthcoming on the basis

—S 39—Correction on the ground of admission to tenancy—When can be made

Where an applicant for correction of papers bases his right on an admission to tenancy, it is for him to prove by clear evidence that he was so admitted, but his name cannot be entered on the basis of mere presumptions. (F SINGH v BAL 1940 A W R)

—S 39—Correction—Long standing entries—Questions involving title and rights—If can be gone into

It is difficult to alter entries that have stood for 16 years by summary proceedings. Any alteration which would involve an adjudication of title and rights cannot be properly dealt with in such miscellaneous proceedings as correction proceedings. (Harper, S. M. and Sathe,

## U P LAND REVENUE ACT (1901), S 37

J. M.) CHHEDA v BANWARI 1940 E D 247= 1940 A W R (B R) 142

—Ss 39 and 228—Khatauni cases—Assistant Collector, first class, if can deal with correction of

Every Assistant Collector first class, is not competent to deal with Khatauni cases. Such cases by an Assistant Collector, first class, a sub-division, only if the cases are by a special or general order passed himself. (Harper S. M. and Sathe 1940 A W R (B R) 169=1940 E D 445= 1940 O A 1000

—S 40—Scope of enquiry in Revenue Court Where a transaction did take place which necessitated

RAM 1940 A W R (B R) 163  
—S 40 (3)—Scope and effect of—Order in correction of papers case—Binding nature

According to S 40 (3) of the U. P. Land Revenue Act under this section the Assistant Collector has no right to issue an order under S 42 of the Act in all subsequent cases. (V. MASURIYA DIN 1940 A W R (B R) 180-

—S 41—Demarcation, application for—If can be withdrawn

An applicant who applies for demarcation under S 41 of the United Provinces Land Revenue Act is at

—S 44—Entries in the khewat—Presumption of correctness—If conclusive evidence

Though the entries in the khewat are to be presumed to be correct, they cannot be conclusive evidence under the provisions of S 44 of the U. P. Land Revenue Act. (Thomas, C. J. and York, J.) KAMTA PRASAD 1937 A W R 127=1937 E D 455

—S 79—Settlement officer's duty under—If can determine gross rent

Under S 79 of the United Provinces Land Revenue Act the Settlement Officer is not bound to determine the gross rent. (A. L.)

1940 A W R (O O) 289=1940 O A 528= 1940 O W N 555=A. L. R. 1940 Oudh 385

—S 87—Fixing rent under—If an enhancement

The settlement officer under S 87 of the U. P. Land Revenue Act fixes rents and where it was a case of fixing the rent of a tenure the nature of which was determined for the first time by mutual agreement

## U. P. LAND REVENUE ACT (1901), S. 109.

entered into by way of compromise and the usual rules for fixing the rent on under proprietary holdings were applied and a rent was arrived at, it was held that it was not a typical case of enhancement of rent. (*Marsi, S.M. and Miki, J.M.*) **LALTA RAKSH SINGH v. GANGA SHANKER.** 1940 E.D. 77 = 1940 A.W.R. (B.E.) 23.

—S. 109—*Partition—Rule as to measurement of residual part—If a residual cannot be kept part then where effective enjoyment is not reference possible.*

The rule is that there should be no partition where the residual part is less than five acres and it is a sound and salutary one. But if on account of bitter disputes between co-tenant, effective enjoyment of residual property is not possible without partition of an imperfect character, then the mere fact that the residual part would be less than five acres would not constitute sufficient reason under S. 109 (1) of the U. P. Land Revenue Act to stop partition. (*Miki, S.M. and Harper, J.M.*) **SAHDEO SINGH v. RAM PAT SINGH** 1940 E.D. 21 = 1940 A.W.R. (B.E.) 19 = 1940 A.L.J. (Supp.) 11.

—S. 111 and C. P. Code, O 23, B. 2—*Rescission of order under S. 111—Civil suit within time—Withdrawal—Fresh suit after period of limitation—If barred.*

Where a civil suit is filed under S. 111 c. within the three months withdrawn with the leave of the Court, it is not time barred. The above view was upheld by their Lordships as it was based on a long course of decisions which they did not desire to disturb, though they doubted its correctness. (*Thakur, C. J., Allier and Gupta, J.J.*) **SUMER CHAND v. MUKHTAR.** 1940 A.L.J. 101 = I.L.R. (1940) All. 123 = 12 R.A. 503 = 137 I.C. 255 = 1940 A.W.R. (H.C.) 116 = 1940 E.D. 73 = A.I.R. 1940 All. 147 (F.B.).

—Ss. 114 and 131—*Partition proceedings—When complete—When effects rights of pre-emption—AGRA PRE-EMPTION ACT, S. 19 AND UNITED PROVINCES LAND REVENUE ACT, S. 131.*

1940 A.L.J. 3.  
—S. 124—*Perfect partition of mahal constitutes a perfect partition—If permissible.*

Where the question was whether a mahal constituted by a perfect partition can again be partitioned into two separate mahals by perfect partition it was held that it did not appear that it would be any more correct than the existing arrangement. (*Harper, S.M. and Miki, J.M.*) **KARAY SINGH v. DURGA PRASAD** 1940 E.D. 233 (2) = 1940 O.A. 1940 A.W.R. (B.E.) 1940 A.L.J. 3.

—Ss. 133 (1) and (2) and 210—*Scope of cases, if filed, to Board.*

S. 133 (2) of the United Provinces Land Revenue Act merely lays down a special period of limitation. S. 133 (1) provides that in various points on which a further appeal can lie against the order of the Collector. There is no provision limiting such appeals to only one Court. Hence the general provisions of S. 210 are clearly applicable to partition cases. This is further emphasized by the fact that sub-cl. (5) of S. 210 refers to cases showing that they come under the provisions except so far as specified regarding limitation. In such a case when an appeal is not filed, a revision is barred. (*Thakur, C. J., Allier and Gupta, J.J.*)

## U. P. LAND REVENUE ACT (1901), S. 233.

**CHUP KUNWAR v. JOTI PRASAD.** 1940 E.D. 219 = 1940 A.W.R. (B.E.) 148.

—Ss. 153 and 164—*Sale under decree held by co-operative society—Disposal of Ss. 153 and 164—Civil suit to declare sale void—If barred by S. 233 (w). See UNITED PROVINCES LAND REVENUE ACT, Ss. 233 (w), 163 AND 164.* 1940 O.W.N. 458.

—Ss. 175 and 233 (1)—*Fraudulent sale for annas of land revenue—Civil suit to set aside if barred.* See 1939 D.G. Col. 1149. **RAM KUMAR LAL v. RAM CHARIT LAL.** 135 I.C. 333 = 12 R.A. 315.

—S. 210—*Application.* See U. P. LAND REVENUE ACT, Ss. 133 (1) AND (2) AND 210. 1940 E.D. 219.

—S. 218—*Application under S. 218 of the U. P. Land Revenue Act should be filed before the Commissioner and not directly before the Board.* (*Saiki, J.M.*)

Reference by Commissioner of partition's order—*Power of Board.*

Where the matter is before the Board in revision on a petition by the Commissioner...

of being carried out or on the face of it is incorrect, it cannot be interfered with under S. 218 of the Land Revenue Act. (*Harper, S.M. and Saiki, J.M.*) **DWARAKA SINGH v. RASDIO SINGH.** 1940 O.A. 1115 = 1940 E.D. 535.

—S. 218—*Patwaris—Penal proceedings—Procedure to be followed—Enforcement by appellate authority—Proper procedure.*

As the punishment of patwaris is a judicial proceeding...

—S. 218—*Revisional powers in land revenue matters—If the law exercise.*

—S. 218—*Revisional powers in land revenue matters—If the law exercise.*

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## U P LAND REVENUE ACT (1901), S 233

13 E O 63=1940 O A 619=1940 O L R 428=  
1940 A W R (C O ) 331=1940 O W N 570=  
A I R 1940 O u d h 354 (F B )  
—S 233 (k)—Title not put in partition Court—

(United Provinces) framed under Co-operative Societies Act is passed and an attachment is made by the Collector as for an arrear of land revenue, when it is found that the decree is invalid, the attachment in pursuance thereof is also invalid S 233 (m) of the U P

1910 A L J 588=A I R 1940 A l l 482  
—Ss 233 (m), 163 and 164—Sale in disregard of Ss 163 and 164—Suit to declare sale void—If barred by S 233 (m)

Where in pursuance of a decree held by a co-operative society the property of a minor whose name had

minor as required by S 104 of the Act and a civil suit was brought by the minor for declaration that the property was his and that the sale was void and in effect and it was contended that the suit was barred by S 233 (m) of the Land Revenue Act. It was held that it would be a travesty of justice to hold that in such a case the minor had no remedy left to him if he did not

12 E O 397=1940 A W R (C O ) 223=  
1940 O W N 458=1940 O A 406=  
1940 O L R 252=A I R 1940 O u d h

UNITED PROVINCES LOCAL RATES ACT  
(I OF 1914), S 8 Expl—Annual value—W h  
—Calculation of local rate—Basis of

Under Explanation to S 8 of the United Provinces Local Rates Act the annual value means double the land revenue paid by the superior proprietor on account of the land. Hence to arrive at the local rate the calculation should be based on the land revenue payable by

## U P MUNICIPALITIES ACT (1916), S 162

sons were or were not given by the Registrar and whether those are or are not good reasons, the Civil Court cannot review the action of the Registrar (*Bennet, J*)  
JAGADISH PRASAD v MEDICAL COUNCIL, U P

—S 97—Contract of lease—Requirements of S 97 not complied with—Effect—Lease acted upon—Lessor, if can claim benefit of S 53 A, T P Act or restitution under S 65, Contract Act

Where in the case of a lease of a site to the Municipality, the Municipality did not comply with the requirements of S 97 of the U P Municipalities Act, it was held that the contract was not binding on the Municipal Board and that though the lease was acted upon, the lessor could not claim the benefit of S 53 A of the T. P. Act, in a suit by him on the lease. It was further held that the lessor might possibly have obtained restitution under S 65 of the Contract Act if he had made the claim in

—S 128 (1) (xiii)—Right to levy terminal tax—"Import", meaning of—Goods brought into the Municipality on its way to a place beyond municipal limits—Liability to tax See 1939 Dig Col 1152,  
HARDWARE MAL HARNATH DAS v MUNICIPAL BOARD DEHRADUN I L R (1949) A l l 4=

187 I C 468=12 R A 533

When competent—If can be made during pendency of

disposal of the appeal, during the hearing of an application for review of the orders passed in the appeal. The order on review contemplated by S 164 (2) of the Act clearly means an order which can be substituted in place of the original order and not any other order whatsoever.

## UNITED PROVINCES MEDICAL ACT (III OF

1940 A W R (C O ) 303=1940 O W N 603=  
1940 O L R 489=1940 O A 590=

## U P MUNICIPALITIES ACT (1916) S 164

reference under S 162 (1) is not competent. The order on review contemplated by S 164 (2) is an order which can be substituted in place of the original order and not any other order whatsoever. Hence the appellate authority has no jurisdiction to pass an order making a reference under S 162 (*Zia ul Hasan and Srivastava ff*) CHHOKMAL RAM CHANDRA v NOTIFIED AREA, BARGAON 189 LO 491-1940 O L R 476-

13 R O 85-1940 A W R (C C) 246-

1940 O W N 503-1940 O A 463-

A I R 1940 Oudh 400

—Ss 164 (1) and 160 (1)—*Levy and realisation of tax on thela not plying for hire within municipality—Remedy*

Where the municipality levied and realised a tax on

## MUNICIPAL BOARD, MEERUT

I L R (1940) All 383=190 LC 759=

1940 A W R (H C) 274=1940 A L J 330=

A I R 1940 All 346

—S 164 (2)—Order contemplated by See U P MUNICIPAL ACT Ss 162 AND 164

1940 O W N 503

—S 177 and Transfer of Property Act S 100  
—*Arrears of Municipal Tax—Liability for—Purchaser in execution sale*

According to S 177 of the U P Municipalities Act

—Ss 245 and 321—Mill set up with sanction of Municipal Board—Suit by adjoining owner the working of the mill—If barred by S 34 Dig Col 1145 MOIN UDDIN v ABDI

I L R (1939) All 724=186 IC 99=

—S 265—Scope and object of See Col 1155 MEWA RAM v MUNICIPAL BOARD MUTTRA I L R (1939) All 770

—S 273—Scope of authority given to Municipality under

The authority given to the Municipal Board under S 273 read with S 7 of the U P Municipalities Act is not absolute. The Board is permitted to put up dust or rubbish does not results LUCKY

19

S 298  
reason

## U P PREVENTION OF ADUL ACT (1912) S 6.

RAM v MUNICIPAL BOARD, MUTTRA

I L R (1939) All 770

—Ss 298 and 299—Bye laws framed under S 298

—Bye law requiring licence to store wood—Storing

tumbar—Absence of licence—If offends bye law See

1939 D G Col 1156 DAULAT SINGH v EMPEROR

186 IC 283=41 Cr L J 285=12 B A 394=

A I R 1940 All 35

—S 298 H (b)—Bye laws under—Bye law No. 2

—If ultra vires of the powers of the Board See 1939

Dig Col 1157 MEWA RAM v MUNICIPAL BOARD,

MUTTRA I L R (1939) All 770

—S 298 (2) H (c)—Scope and object of See

1939 Dig Col 1157 MEWA RAM v MUNICIPAL

BOARD MUTTRA I L R (1939) All 770

—S 298 (2) H (c)—Scope and object of notice

—Competency of Criminal

See 1939 Dig Col 1157

I L R (1939) All 875=

41 Cr L J 5

—To comply with notice—Accused,

1157 MOTI LAL v

All 875=41 Cr L J 5

Any order or direction

an order made by the

Dig Col 1158 MOTI

L R (1939) All 875=

41 Cr L J 5

—S 321—Bar of civil suit—District Magistrate's

order passed on appeal under S 318—If can be ques-

tioned See 1939 D G Col 1158 BANSI DHAR v

BISHAMBAR NATH A I R 1940 Oudh 102

—S 337—Declaration that certain locality is not

held area—Effect on proprietary rights

There is absolutely no authority for the contention

that a declaration that a certain locality is a notified

area divests the proprietors of the land of their prop-

rietary rights (*Thomas C J and Zia ul Hasan, J*)

KANHAIVA LAL v HAMADALI

185 T C 467=1940 O L R 16=12 R O 243=

A 408=1940 O W N 462=

707=A I R 1940 Oudh 164

PARTITION MANUAL

tion for partition—Require

lowered

has been framed under S 234

ne Act and has replaced the

deals with the requirements as

or partition and also the pro-

cedure as to proclamation and serv

of notices As in

individual so long as it is possible to effect it individual

ly If the Court decides that it is not possible to get

individual service effected then proclamation will be

issued as laid down in S 197 of Act III of 1901

(*Alkita S.M. and Harper, J.M.*) ALLAH TALA v

WAJID ALI 1940 R D EO (2)=

1940 A W R (H.C.) 41

OF

copy of

Act,



## UP PREVENTION OF ADUL ACT(1912), S 16

... from pleading  
etc of the  
And this  
... person who is

accused of abetment of sale In order to justify the conviction of a person who is not the actual 'vender' it is necessary to prove the existence of circumstances from which it can reasonably be inferred that he was aware of the adulteration (*Collister and Braund JJ*) MUNICIPAL BOARD, BAREILLY v RAM GOPAL

1940 A W R (H C) 482=1940 O W N 841=

1940 A L J 653=1940 A C R C 163=

A I R 1940 All 517

—Ss 16 and 17—Breach of R 8 of rules framed under S 16 by servant liable See 1939 Dig, C EMPEROR

41 Cr I

—(as amended in 11

The words in which gh

in S 18 of the U P

(Amendment) Act 1930 c

things mentioned that is

it were not so it would be an offence to keep any substance to be used for the adulteration of such ghee in any kind of a factory or any kind of a shop not what the legislature intended but it did intend the manufactory or the shop were to be those in the ghee was manufactured (*Bennet and Verma*) EMPEROR v CHHANGA MAL

I L R. (1940) All 125=187 I C 855=

12 R A. 580=41 Cr L J 522=1940 A C R C 8=

1940 A L J 14=1940 A W R (H C) 32=

A I R. 1940 All 174

UNITED PROVINCES REGULARISATION OF REMISSIONS ACT (1935)—If intra vires of the United Provinces Legislature

—Scope and effect of

Per *Iqbal Ahmad, J*—By the U P of Remissions Act, validity is given to w and invalid orders already passed or t future by the executive authorities T designed to and does in substance though not in form, validate the invalid orders as to remissions passed by the Provincial Executive Though disguised as an enactment regularising procedure, the Act is, in fact and in substance an enactment regularising illegal executive orders

Per *Bajpai, J*—The U P Regularisation of Remissions Act pretends to deal with procedure only, but this

## U P REV COURT MANUAL Para 52

*Bajpai and Mohammad Ismail JJ*) ATIQA BFGAM v. ABDUL MAGHNI KHAN

I L R (1940) All 455=188 I C 586=

13 R A 27=1940 E D 135=3 F L J (H C) 83=

1940 A W R (H C) 208=1940 A L J 274=

A I R 1940 All 272 (F B)

—and Government of India Act, S 104 and Sch VII—U P Regularisation of Remissions Act, if falls under S 104, Government of India Act or under any of the lists in Sch VII

Per *Iqbal Ahmad, J*—The U P Regularisation of Remissions Act is not with respect to the jurisdiction and powers of Courts within the meaning of entry 2 of the Provincial list It is also outside the scope of the

and not within entry 4 and entry 15 of List III (*Iqbal Ahmad, Bajpai and Mohammad Ismail, JJ*) ATIQA

the mere fact  
tion of Sales  
exclude the  
Hence it is

—S 5—Transfer under—Nature of—Right of pre-emption if arises See AGRA PRE EMPTION ACT, Ss 6 AND 11 1940 A W R (H C) 284

UNITED PROVINCES REVENUE COURT MANUAL Ch X, Para 22(2)—Instruction, if mandatory—Commissioner for local investigation of past possession—Legality

The instruction contained in Para 22 (2) of Ch X

While it showed the old tenancy Act to remain in force it took away the benefits of the Act by introducing Act XIV of 1938 (*Iqbal Ahmad,*

Court—Dismissal of appeal, when justified When there is a non compliance with para 52 of the

## U. P. REV. CODET MANUAL Part. 1000.

Revenue Court Manual, in that some necessary papers are not filed, the Court should usually give time within which compliance should be certified. This must be reasonable time, and, if there is no compliance, the application for the extension of time should be refused. If the application is granted, the Court should be satisfied that the applicant is not abusing the discretion of the Court to grant under S. 148, C. P. Code. For non compliance of the order within time, the memo of appeal should be dismissed. (Afarik, S. Af and Afika, J M) CH: PRASAD 1940 R.D. 84=1940 AWR

under para 1000 of Revenue Manual which is identical with R 90 of O 21, C. P. Code. (*Harper, S M and Sathe, J M*) BISHANBAR DAYAL & GOMTI DEVI  
1940 R.D. 227 (2) = 1940 O.A. 713 =  
1940 A.W.E. (B.R.) 119

UNITED PROVINCES STAY OF PR  
INGS ACT (1937) — *Applicability* —

*—Delivery of possession—Appeal against order allowed—Restoration of possession—Board Collector's order after the Stay of Process came into force—Re-delivery of possession—If stayed under the Act.*

Where in execution by way of ejectment under the Agra Tenancy Act possession was delivered and on the Collector allowing an appeal against the original order, the appeal was transferred to the other party.

and that hence the Stay Act could not be applied  
(Harper, J M) BAKHTAURI & KAMLA KANT.  
1940 E.D. 194-1940 A.W.R. (E.B.) 69(1)

—Schedule —Appl  
Exemption application—

The schedule to the St.  
refer to any proceedings  
Hence where a suit under

—S. 2—Applicability—Remand of execution proceedings to Tahsildar.

When execution proceeds  
Tahsildar by an appellate Cou  
passed in the case are set  
proceedings are fresh proceed  
the decree and hence S 20  
Act would clearly apply to the

**U. P. TENANCY ACT (1939)**

*Sathe, J.M.)* RAM MANOHAR v. RAM ADHIM  
1940 E D 419=1940 A.W.R. (B.R.) 268

**UNITED STATES TEMPORARY POST-  
EXECUTION OF DECREES**

appeal with reference to orders under—If governed by C. P. Code

In the absence of any special provision in U. P. Act X of 1937, with regard to the right of appeal against

—S 3 (1)—*Application under Forum.*

§ 3(2) of  
be presented  
executing it,  
the Act could  
its inasmuch  
it (Allsup

—B 3(1) and (2)—Finding as to amount paid as  
land revenue—Binding nature

—S 3—*Applicability—Decree for costs.*  
S 3 of the United Provinces Temporary Postpone

—§ 6—Plea under—Not pleaded in plaint—It can  
be raised later on See C. P. CODE, O 6, R. 7.  
1940 O.W.N. 988

has to see is whether under the substantive law prevailing at the time when the original suit was decided, the decision was correct according to law (*Nikits, S.N. and Harger, J.V.*) KOMAL AHIR v. RANCHAN LAL  
1940 E.D. 92-1940 A.W.B. (B.E.) 27 (2)-  
1940 A.L.J. (Sund) 7.

—If affects tenant's right to build on the land,

U P TENANCY ACT (1939), S 35

—§ 35—Benefit of—If one be slain in a fight by one who was a trespasser

A person who was not a tenant under the old Act and who was not a tenant under the old Act and whose estate was passed again under the old Act would not be in a better position than the matter comes up in appeal, on the ground that S 35 has changed the line of succession to an occupant tenant. The Act cannot act retrospectively. The daughter's son who had failed to share in cultivation with his maternal grandfather and as such was a trespasser under the Act of 1926 and adjudicated a trespasser could not claim the benefit under S 35 in appeal. (Mehta S M and Harper J L)

KANCHAN LAL  
1940 A W R (R R) 27 (2) = 1  
—Ss 180 and 236—Sust filed under S 127 Oudh  
Rent Act—Procedure, after new Tenancy Act came into  
force

S 180 of the new U P Tenancy Act corresponds to S 127 of the Oudh Rent Act. Where a suit is filed under S 127 of the Rent Act and during its pendency the new Tenancy Act comes into force the proper procedure is to continue the proceedings under S 180 of the Tenancy Act and not to dismiss the suit (*Harper, S M and Sathe J M.*) KANHAIAHAL v BALDEO SINGH 1940 A W R (BE) 1365.

—S 276—Procedural law—Retrospective operation  
—Revision under new act if lies where no revision lay  
before

Though ordinarily changes in interest rates have a retrospective effect, it cannot operate as to affect rights which have a retroactive effect.

applications under s 115, C P O  
to such an order with retrospe  
deprive the opposite party of the  
which was final under the  
**TULSHI RAM v MADHO RAM**

1940 A W.R. (O.C.).

—S 275—Reference in pencil  
under the Act

The U P Tenancy Act contains a reference in a pending case. The reference is S 275 which provides that a section cannot be invoked to subordinate Revenue Court in an appeal which is pending before the High Court.

U P. TOWN IMP. APPEAL ACT (1920). S. 3

penic—1) permissible.

Where a reference is not competent under S. 289 of the U. P. Tenancy Act, resort cannot be had to S. 151, C. P. Code, under that section.

SAMPAT SINGH v. 1910 E D 529

A WR (C) 466 = 1910 QWN 1050

—S 296—Scope of

S 296 of the new United Provinces Tenancy Act refers only to suits which have not already been decided by the trial Court at the time when the new Act comes into force (*Hamilton and Radha Krishna* ) ) BHAG-

*Rest Act—Execution—Procedure—Corresponding section—Meaning*

S 296 of the U P Tenancy Act is not at all ambiguous and does not entitle Courts to refuse to execute decrees under S 61 of the Act.

so extended as to include an appeal. Hence in a suit for the right to the 10th Rent District SHEO-

1940 O A 1054-1940 R.D 552-  
C C - - - - - J W N 1123

## IMPROVE

1) (c)—Order

appealable

PEAL) ACT,

(H C) 125

## NCES TOWN IMPROVE

ACT (1920) S 3--*Appeal*

it order under S 64 (1) (c) of

Agreement Act (1919) reflecting

## USURIOUS LOANS ACT (1918).

It appears to be the intention of the U P Town Improvement (Appeal) Act, that mere decisions in regard to questions of law and procedure of the nature decided in—

Town I  
An order  
restore  
(c) is  
NAJBAT  
ILLR (

## USURIOUS LOANS ACT (X OF 1918) (C P Amendment Act of 1934)—Applicability—Trans

per cent and over with half yearly rests—Reduction to 15 per cent simple interest—If reasonable *See* 1939

also said similarly unfair the Court reopened the transaction and allowed 33 per cent from the very beginning (*Davies*) LOBO v JAGAT NARAIN.

1939 A.M.L.J 163  
—S 3 (as amended by Punjab Relief of Indebtedness Act VII of 1934)—Fairness of transaction—Test

interest—If excessive

## CHETTIAR v LOO THON POO

187 IC 445—12 BPC 166—51 LW 702—  
1940 O.L.R. 254—6 B.E. 574—1940 M.W.N. 702—  
A.I.E. 1940 P.C. 60—(1940) 1 M.L.J. 68 (P.C.)

—S 3—Reopening of transaction—Ground—High rate of interest

The Court when it is of opinion that the interest charged is high considering the ample security available, is entitled to reopen the entire transaction. In the particular case, the Court reduced the rate of interest from 1 per cent compound interest to 1 per cent simple

Y. D. 1940—78

## VENDOR AND PURCHASER

Interest in view of the long delay in filing of the suit and—  
Rate

—S 3 (1) (b) (ii)—Scope—Order for refund by creditor—Power of Court

The power of the Court to order repayment by the

Where the condition of the contract is that the

the full amount of the loss sustained by him (*Tek Chand and Abdul Rashid, J.J.*) KARTAR SINGH v SANT SINGH A.I.E. 1940 Lab 321

—Covenant to pay vendor's creditors—Default by vendee—Vendor's right of indemnity

The major portion of the consideration had been left with the vendor.

A.I.E. 1940 Lab 321

—Purchaser under taking to pay portion of price to vendor's creditor—Nature of the obligation created

Where a vendee covenants under a sale deed to pay a

A.I.E. 1940 All. 500

—Rights of vendee—Property sold as free from encumbrance—Encumbrance subsequently discovered mortgage—Rights of—Amount retained by him insufficient to discharge mortgage—Vendor's right to its refund—Contract Act S 19—T. & A. S 55 (5) (b)

Where a property which was sold as free from encumbrance is subsequently discovered by the vendee as subject to a mortgage of which he had no knowledge at the time of the sale the sale is voidable at the option of the vendee or in the alternative the vendee is entitled to insist that he should be put in the position in which

## WAIVER

money to pay the amount due to the mortgagee. But if the amount in his hand is not sufficient for that purpose, he is entitled to retain that amount until the vendor

entitled to claim the amount retained by the vendee (Lodge, J) **TRIPURA CHARAN & NIKUNJA BEHARI**  
190 IC 494=13 RC 167=44 CWN 330=  
**AIR 1940 Cal 380**

**WAIVER**—Objection to jurisdiction—Appeal in competent—Failure to raise objection to competency—If renders order passed in appeal valid  
**O 9 R 9**

**WAJIB UL-ARZ—Constructor**

Where the Wajib ul arz recorded a custom in the following words 'The jethanis custom according to

—**Entries in—Binding nature**  
parties to it  
The entries in a wajib ul arz bind

—**Entries in—Nature of**  
Wajib ul-arzes sometimes record not custom but the

(2) **WAKE ACIS****WATERS AND WATER COURSES—Public**

stream must  
must flow  
at every  
defined  
a good  
part of the year does not cease to be river merely because  
at times it is accustomed to become dry (Agriculture)

## WILL

1939 Dig. Col 1165  
**SECRETARY OF STATE**

**JARIHAR PRASAD SINGH v**  
21 Pat L T 873

Ryot holding land in ayacut of  
supply of water for irrigation—  
sold or regulate—Limits See  
**MADURANAYAKAN PILLAI v**  
185 IC 476=  
12 R M 546

**AIR 1940 Mad 86**

1939 Rang L R 744  
Fec—Whipping—Per  
over 16 years—Age

It is not correct to say that a convict who is over 16

## WILL

- See also (1) **HINDU LAW—WILLS**  
(2) **MAHOMEDAN LAW—WILLS**  
(3) **SUCCESSION ACT**  
(4) **HINDU TRANSFER AND BEQUESTS**

pendent knowledge of what was in the alleged will  
(Roberts C J and Blagden J) **CYRIL v D**  
1940 Rang L R 654  
absolute estate—Gift over—

which was  
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thout inde

—**Construction—Absolute estate—Use of word**  
'malik'.

It is well settled that in a will, the use of the word  
malik, coupled with the fact that the legatee has been  
invested with full power of alienation, clearly establishes  
that an absolute estate has been conferred, regardless of

## WILL.

whether the legatee is a male or a female (see *Abdul Rashid, J.J.*) PARS  
RAM. 189 LC 546-13 RL

Construction—Absolute interest to widow—Prohibition against selling immovables—Effect of

Construction—Bequest of absolute estate to testator's widow—Direction for payment of annuity to college—Validity—If mere pious wish or clear obligation of widow—If cuts down absolute estate

A testator by his will widow and gave a direct annuity in the following term part of the Musammat to demise, a sum of Rs. 700 out of the National College, make over every year a sum of Rs 700 to the Trustees of the said college for expenses of the school department . . . and this amount of rupees seven hundred shall all along be continued to be paid every year by the said Musammat.

Held, (1) that the will was not a will (2) that there was widow to pay over 200; (3) that the will to the widow was in the annuity. (For KISHORI KUER.

Construction persons directing to

Validity—If void as perpetuity or for uncertainty

Where a testator bequeaths property to four persons directing that "the same be kept as tarwad properties" without any indication as to whether the testator intended to give the property to a tarwad formed on the analogy of a *marumathakazham* family or one founded on

Construction—Bequest of residue to legatee to be spent for the political uplift of India—If absolute gift or upon trust—Validity—See *citron A t, S t 138 and 139*

A testator by his will gave four legacies and after directing them to be given to the beneficiaries, *inter alia*, disposed of the residue in these terms:—"The balance of my assets after the above mentioned four gifts is to be handed over to Mr C. Rose . . . of

## WILL.

Held, (1) that there was no beneficial gift to B, but that the clause constituted a trust, (2) that the trust for

Construction—Bequest to daughter for life—Gift over to her sons or sons' sons—Death of daughter

(1) latter to inherit (2) 2 M L J. 376 (3) cation or help to (4) *dhic service* (lokop) (5) void for vague

A will, *inter alia*, provided that whatever residue was left after setting apart certain sums and giving away the legacies, the "executors shall utilise all that residue of the estate for the purpose of education or for rendering help to the poor or for any other purpose of

ly meant that the of the three and they there was or its in and mere that there to charity, (5) that *lokoppygi* works by themselves were not considered charitable; and (6) the bequest in question therefore failed on the ground of vagueness (*Kanva, J*) PRABHAKUVERBAI AMRITAL v KASUVEABAI SAKER CHAND I LR (1940) Bom. 761= 42 Bom.L.R. 827=A.L.R. 1940 Bom 382

Construction—Bequest to Hindu widow—Words conferring absolute power of alienation such as gift, mortgage, sale, &c.—Effect of—Absolute estate or life estate—Subsequent gift over to daughter—Validity—Use of word "maintenance" in will—If cuts down interest to mere life estate—*Interim*

Where a Hindu by his will confers an unrestricted absolute power of alienation on his widow, she will take an absolute estate unless he intended by the language used by him to confer on her a life estate with a power of appointment. *Prima facie*, where powers of absolute disposition are conferred on the widow, it is taken as an intention that the testator intended to create an

## WILL

on the widow, and when the will confers powers of alienation of the widest amplitude such as gift, mortgage, sale etc., that is sufficiently wide

donee is invalid, the principle being that once a property is given absolutely to another the donor cannot dispose of another man's property. A man cannot create a new course of devolution when a gift is made. It is no doubt true that although the words are absolute in the first instance, subsequently occurring words may be sufficiently strong to cut down the absolute estate to a life interest. But before this is done, there must be words sufficiently precise and certain to cut down the said interest. The fact that the word 'maintenance' is used in the will as a reason for making provision for her and as a motive of the gift would not cut down the interest conferred on her, when the operative portion is absolutely clear and gives unqualified and unrestricted powers of alienation. One cardinal rule of construction in construing a will is to give effect to every word in the will and try to effectuate the intention of the testator and not to frustrate it (*Venkataramana Rao J*) ANANTHA SAYANA NAIDU v KONDAPPA NAIDU

191 I C 17 = 1940 M W N 269 =

A I R 1940 Mad 479 = (1940) 1 M L J 212

—Construction—Construction of words used in another will—Value of

It is not useful to construe the words in one will by reference to another when the will is not a part of the same both in the context and for

PRABHA KUMAR v AMR

SAKER CHAND

42 Bom L R 827

—Construction—Maintenance provision for members of family—Family—Meaning of

Where a testator by his will provided for the maintenance of the members of his family,

Held, per *Sen, J* that the term "family" meant the testator's descendants at the time of the testator's death (*Panckridge, J*)

—Construction of family—K

corpus of the income to any one of his sons, although ultimately after their mother's death they were to take equally

and their families continued to reside under the old family roof where his widow resided (*Derbyshire C J*)

## WILL

and *Panckridge, J*) GOLAPMONI v HRISHIKESH

44 C W N 597.

—Construction—Meaning of words—Duty of

I L R (1940) Bom 761 = 42 Bom L R 827 =

A I R 1940 Bom 382

—Construction—Persona designata See 1939 Dig, Col 1169

KARTAR SINGH v DAVAL DAS

I L R (1939) Kar (P C) 350 =

42 Bom L R 1 (P C)

—Construction—Powers of Court—Limits See

1939 Dig, Col 1169 KARTAR SINGH v DAVAL DAS

I L R (1939) Kar (P C) 350 =

42 Bom L R 1 (P C)

—Construction—Residuary bequest—Bequest of all properties of testator not shown in will—Effect and validity of

A provision in a will that certain named persons should take all properties found to belong to the testator and not shown in the will is a good residuary bequest (*Wadsworth and Patanali Sastri, JJ*) MEHERWAN JEHANGIR v DHUNBHAI KAVASHA MISRA

1940 M W N 569 = 52 L W 71 =

A I R 1940 Mad 785 = (1940) 1 M L J 913

—Construction—Vested estate—Bequest in favour of wife for life and on her death to adopted son and his heirs absolutely—Provision that if adopted son predeceased wife unmarried, wife should take absolutely—

further provided that if the adopted son died during the lifetime of the testator's widow unmarried, all the estate was to go to the latter absolutely. The adopted son predeceased the testator's widow leaving him surviving his widow and daughter

44 C W N 612

—Construction—Vested interest—Property bequeathed

Where certain properties are by the terms of a will given to a person for life and after him to his male issue absolutely, failing which they were to go to the daughter of the testator absolutely, it was held that the

1940 O W N 291 = 1940 O A. 270 =

A I R 1940 Oudh 184

—Construction—Vested remainder—Bequest to widow for life and after her death to daughter's son—

## WILL

*Death of daughter's son before widow—Property if passes to heirs of remainderman or reverts to heirs of testator*

In law it is presumed that where there is a life estate given to a person with a gift over, the remainder vests on the testator's death in the remainderman unless there are very clear words to show that the testator had a contrary intention. A testator left his property to his widow for life and provided in his will that after her death the property should be enjoyed by his daughters and R R predeceased the widow leaving his widow

(*Horwill, J*) SUBRAMANIAN CHETTIAR v LAKSHMANAN CHETTIAR 1940 M W N 668—51 L W 652—(1910) 1 M L J 817.

*Construction—Words amounting to testamentary disposition of property*

The words after my death I shall be the owner of my entire movable and immovable property and he

189 I O 101—132 A 115—1940 A W R (H C) 300—A I R 1940 All 353

*Disappearance of original—Presumption*

Where a will duly executed is traced to the possession of the deceased and last seen there is not forthcoming on his death it should be presumed to have been destroyed.

rebat i  
v MAI

Rule a  
MOOS,

## AMOUNTS TO

*Executor—Appointment for limited purpose—Express direction to carry on all general duties—Necessity* It is not necessary when an executor is appointed for any limited purpose specified in the will, that there should be an express direction that he should also carry on all the general duties of an executor.

*Executor—Liability*  
Executor giving security  
deeds to one of his  
liability for debt

Where executors of a deceased debtor for consideration give security by deposit of title deeds over an asset belonging to his estate to one of his creditors in respect of a debt due from the estate and there is no indication that the executors intended to assume personal liability for the secured debt there is nothing in the Transfer of Property Act or in the law of India to make them so liable by reason that they have granted the security or by reason that they have done so by deposit of the testator's deeds. (*Sir George Rankin*) SIR JAMSHEDJI JEEJIBHOY v SORABJI BYRAMJI. 67 I A 270—118 I C 648—12 B A 430—A I R 1940 All 57

## WILL

52 L W 32—6 B E 623—

O 6 R 11—CHANGE IN THE NATURE OF SUIT.  
1940 Rang L R 603

*Executor—Liability—Mortgage—Executors giving security for testator's debt—Personal liability for*

monial upon the sufficiency of the assets and depended upon the future of land value. The executors also undertook to pay interest on the debt for the aforesaid period of two years.

Held that the promise to pay interest not having been expressly qualified in the context there was not enough to show that the promise was intended as sufficiency of the testator's assets a limited period of time and the transaction. The executors not that their words of promise were he direct and simple sense of a

made themselves personally liable for the interest which accrued during the two years with interest thereon. (*Sir George Rankin*) SIR JAMSHEDJI JEEJIBHOY v SORABJI BYRAMJI. 67 I A 270—118 I C 648—12 B A 430—A I R 1940 All 57

I L E (1940) Bom. 534—187 I C 773—52 L W 32—6 B E 623—

I L E (1940) Kar (P C) 179—71 C L J 459—

319—19—75—C)

See  
ALIM  
36.

6 B R 274—12 B P 436—A I R 1940 Pat 40

*Oral will—Proof—Onus—Nature and extent*  
See 1939 D G Col 1172 TEMPLE OF SRI MADAN MOHANJI v KISHNA KLAR I L E (1939) All 977—186 I C 648—12 B A 430—A I R 1940 All 57

*Proof—Sound disposing state of mind—Burden*

uce evidence to  
Registration of  
Agency to prove  
e Col 1174

A I R 1940 Mad 315

*Revocation—Proof—Will not found after death of testator—Inference of revocation—If justified* See 1939 D G Col 1174 SRINIVASA LYENCAR v TIRUNARAYAN. 18 Mys L J 17

*Testamentary capacity—Unsoundness of mind*  
Test. See 1939 D G Col 1174 SURADHANI DEVA v RAJA JAGAT KISHORE ACHARYA. 186 I C 23—12 E C 423

*Validity—Burden of proof—Suit to set up by the defendants as not valid by reason of minority of testator*



## WILL

*sound disposing state of mind—Onus—Limitation Act, Arts 92 and 120—Recital in will as to age of testator—Admissibility and value of—Statement not made by testator—Effect.*

The plaintiff, one of whom was a minor brought a suit for a declaration that an alleged will set up by the defendants as having been executed by one T was not executed by him and could not be, at all events said to be valid as the testator had not attained majority on the date on which the will was alleged to have been executed, and that as the testator was suffering from cholera and died within a few hours of the alleged execution of the will he could not be said to have possessed a sound disposing state of mind.

*Held* (1) that the onus of proving that the testator

it and set it up, as in the case of a probate proceeding: (2) that Art. 120 and not Art. 92 of the Limitation Act would apply to the case, in as much as the will was also being contested on the ground of want of capacity on the part of the testator and not merely on the ground that it was a forged will and not genuine: (3) that recital in the will that the testator was 21 years of age which was made not by the testator but by the persons present at the time of the writing of the will and which was written by the scribe cannot be relied upon as proof of the age of the testator, and was not relevant under S. 32 (7) of the Evidence Act (*Venkataramana Rao and Abdul Rahman JJ*) *Gnanaprakasam Pillai v. Parasakthi Ammal* 52 L.W. 440 = 1940 M.W.N. 983

*What amounts to—Form of—Use or absence of the word "will"—Materiality—Executor—Appointment by implication—Employee in company becoming member of provident fund—Declaration in writing signed and attested by two witnesses naming his nephew as person entitled to receive payment of money on his death—Direction that money to be paid to father of nephew on his behalf.*

No technical words are necessary for a will and the form of a will is immaterial. It is enough if the document embodies the legal declaration of the intention of the testator with respect to his property or any portion of his property which he desires to be carried into effect after his death. The mere use of the word "will" in a declaration cannot make it a will if it does not amount to a testamentary disposition nor can the absence of the word make it any the less a will if there is a testamentary disposition. An employee of a limited company was required on becoming a member of the Provident Fund of the company to furnish a declaration in a particular form signed by himself in the presence of two witnesses stating the manner in which he wished the

paid to the father of the minor on the minor's behalf describing the father by name. The writing was signed by him and duly attested by two witnesses.

*Held* that the writing was a will made by the employee and was properly executed and attested as his last will (2) that the writing was a will only as regards the money standing to the credit of the employee and

## WORDS AND PHRASES

was therefore a will for a limited purpose, (3) that the person who was to receive the money on behalf of the minor was an executor by implication but for that limited purpose only (*Hasia, J*) *VENKATARAMA IYER v. SUNDARAMBAL* 42 Bom.L.J. 912 = A.I.E. 1940 Bcm. 400

**WIRELESS TELEGRAPHY ACT (XVII OF 1933) S. 6 and R. 2(c) of rules made under the Act—"Complete wireless set" if includes a set under repair—Possession of such a set without license, if an offence**

The expression "complete wireless set" as defined in R. 2(c) of the rules made under the Wireless Telegraphy Act shall be deemed to include an incomplete set when the description Hence the mere license would

be an offence under S. 6 (*Graver, J*) *KAMDARLAL v. EMPEROR* 185 I.C. 371 = 13 B.N. 1 = 41 Cr. L.J. 580 = 1940 N.L.J. 299 = A.I.E. 1940 Nag. 263

**WORDS AND PHRASES—Ahar—Meaning**

An "Ahar" is a reservoir of water or a small hollow in a river bed. An ahar may well be a reservoir constructed in the course of a natural stream (*Agarwala and Meredith, JJ*) *HARIHAR PRASAD SINGH v. JAGAJ DULARI KUFAR* 21 Pat.L.T. 873

**Civil Court—If comprise the Crown**

The term Civil Court does not comprise the Crown (*Stone, C. J. and Clarke, J*) *RADHAKISAN JAIRISAN v. MUNICIPAL COMMITTEE, KHANDWA* 1940 N.L.J. 638

**Cohabitation—Meaning**

The expression "secret and clandestine cohabitation" is a contradiction in terms. "Cohabitation" means a

**'Dhardara'—Meaning** See ALLUVION AND DILUVION 14 Luck. 763

**'Dittam'—Meaning** See MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, 63 (1940) 2 M.L.J. 615

**'Guardian'—Meaning of** See 1939 Dig., Col 1175 *GULATI v. REEVES BROWN* 186 I.C. 39 = 12 E.L. 337

**Kar abadhanta—Meaning**

The ordinary meaning of the term *Kar abadhanta*, is rent fixed in perpetuity (*Sen, J*) *KIRAN CHANDRA v. ASRUMATI DASIA* 44 C.W.N. 991

**'Kuhl'—Meaning of**

The word "Kuhl" is always used as meaning an artificial watercourse and not a natural stream in the districts of Kangra and Hoshiarpur (*Tek Chand and Dalip Singh JJ*) *DHANI RAM v. HAMIRA* 42 P.L.R. 467 = A.I.R. 1940 Lah. 398

**Nadi—Meaning**

The word "Nadi" is used to designate a natural river

**'Nala' means a natural watercourse** (*Agarwala and Meredith, JJ*) *HARIHAR PRASAD SINGH v.*

**'Pargana' and 'Taraf'—Meaning of**

## WORDS AND PHRASES

A Pergunah, which usually covers a very large tract and means a large local division of the Mahomedan

WORKMEN'S COMPENSATION ACT (1923),  
S 3

Proof of dependency—See 1939 Dig. Col. 1176 DAM-  
I.C. 93=12 E.R. 246.  
"Widowed mother"—

"in S. 3(1)(d) (e)

—Upto—If includes last day

—S 3—Construction—Conditions for award of  
and in the course of

## WORKMEN'S COMPENSATION ACT

1923) S 2(n)—Tributors working at

—If "workmen" within the meaning of the

n's Compensation Act  
ght to compensation,  
t to compensation. To  
at the hands of his  
out of and in the  
loyment. There is  
the Indian Law

allowed to do work of their own in their own time and are not subject to the orders of any master as to the way in which, or the time at which, they shall do it, they do not fall within the scope of the Workmen's Compensation Act. The fact that a person is not paid

—S 3—"Out of and in the course of his employment"—Bus driver killed in accident when travelling in bus as passenger standing on foot board—Claim to compensation—Sustainability—See 1939 Dig. Col. 1176, MAHOMED IBRAHIM v. KAMAL SAHIB

188 I.C. 145=12 E.R. 808=A.I.R. 1940 Mad. 207.

—S 3—Willful disobedience of workmen—Liability of employer to compensation—Test—See 1939 Dig. Col. 1176. LEE SHI v. CONSOLIDATED TIN MINES OF BURMA LTD. 185 I.C. 817=12 E.R. 237.

—S 3(1)—"Accident arising out of employment"—Proof required—Onus

In claims for compensation under Workmen's Compensation Act the onus lies on the applicant to prove that the accident arose out of employment, and if the evidence is not sufficient to establish this, the claim fails. An accident arises "out of" the employment where it results from a risk incidental to the employment, as distinguished from a risk common to all mankind, although the risk incidental to the employment may include a risk common to all mankind. While the workman was going back to the camp in the mining area where he was working a dead tree fell on him and killed him. The workman was employed for cutting and clearing jungles or bushes, or even trees; the tree was at some distance from the place where the workman actually had to work and the accident was of the kind which any one who happened to pass by the tree at the time would have met with.

W. Th. Sch II of the Workmen's Compensation Act means, where it occurs, employed on a contract of service and not "engaged in," and where the qualification of person as a workman under the Act is dependent on his employment with other workmen, those other workmen like himself, must be employed on a contract of service (Davis J.C. and Wilson, J.) SIND HINDU TECHNICAL AND INDUSTRIAL INSTITUTE v. SUEKHANDAS. I.L.R. (1940) Kar. 370=190 I.C. 731=A.I.R. 1940 Sind 185

—S 2(1)(d)—Object of awarding compensation

—Husband's right to compensation for wife's death—

## WORKMEN'S COMPENSATION ACT (1923),

S 3,

*Held*, that the falling of the tree on the deceased could not be said to be inherent in the nature of the employment and the casual relationship between the employment and the falling of the tree could not be properly inferred. Therefore the accident which caused the death of the workman did not arise 'out of' his employment and hence compensation to dependent of deceased could not be awarded. (*Mya Bu, O C J and Sparzo, J*) **U YAN SHIN v MA E SEIN**

187 I O 767=12 E R 349=A I R 1940 Rang 18

—S 3 (1)—*Accident arising out of and in course of employment as workman*

An engine driver at a cotton mill finding that a new water pump for his engine was leaking went to a work shop near the engine room to sharpen an iron peg on a

190 I C 780=A I R 1940 Rang 250 (S B)

—S 3 (1) Proviso (b)—*Escape from liability—Facts to be proved*

In order to protect themselves and escape liability the employers must show that the order which was disobeyed was wilfully disobeyed and was given expressly for the purpose of securing the safety of the workmen. Where while carrying out an order of the employer to insert back lagging in the mine the workman excavates beneath a dangerous boulder while inserting the back lagging and receives injuries, in the absence of instructions by the employer to the workman not to excavate underneath or round the boulder because it was a dangerous thing to do and in the absence of wilful disobedience on the part of the workman the employer must pay compensation. (*Roberts C J and Blagden J*) **MAUNG SA HITUN v CONSOLIDATED TIN MINES**

190 I C 690=A I R 1940 Rang 220

—S 3 (1) Proviso (b) (ii)—*Filled before proviso can operate in a*  
Before S 3 (1), Proviso (b) (ii)

and clearly indicate that its purpose is that of securing the safety of workmen otherwise it is not 'expressly'

of doing a particular  
in an emergency,  
dent must have

## WORKMEN'S COMPENSATION ACT (1923)

Sch II

obedience (*Roberts, C J Mostly, Dunkley Sharpe and Blagden, J J*) **KHAIRUJ JAMA v MATARDIN**

1940 Rang L E 759=190 I C 780=

A I R 1940 Rang 250 (S B)

—S 8 (8)—*"Variation of circumstances"—Death of some of dependants after order of distribution—Variation of that order in favour of surviving dependant—Legality.*

The dependants of a Mahomaden deceased, his mother, widow and a minor son were awarded compensation. The share allotted to the minor was deposited by the commissioner in the Post Office. On the death of the mother and the minor son, the commissioner ordered the minor's share to be allotted to the widow and directed the postal authorities to cancel the minors

account and open a fresh one in the widow's name. The order was held to be perfectly valid as the alterations by the deaths of the deceased were a variation of the meaning of S 8 (8) of the Act. The fact that the widow (*Derbyshire, C J and S of RAHIM BUX v*) **JAMES FINLAY & CO**

A I R 1940 Cal 580

—S 10 Proviso—"Sufficient cause"—*Workman after accident re-employed by same employer on same pay*

Where a workman is re-employed after the accident by the same employers in the same workshop at the same rate of wages this fact is in itself sufficient cause for not making an application under the Workmen's Compensation Act within the period of limitation. (*Sale J*) **SAID AHMAD v NORTH WESTERN RAILWAY LAHORE**

190 I C 629=A I R 1940 Lah 227

—S 12—*Workmen employed by contractor—Liability of principal—When arises* See 1939 Dig, Col 1178 **LEE SHI v CONSOLIDATED TIN MINES OF BURMA LTD**

185 I C 847=12 E R 237

—Ss 19 (2) and 8 (8)—*Money allotted by commissioner—Suit for its redistribution—Jurisdiction of Civil Court—Consent decree—Effect of*

—S 30—*'Substantial question of law'*

The question whether there is sufficient cause for to enable the application for on the merits is substantial (*Sale J*) **SAID AHMAD v NORTH**

LAHORE

A I R 1940 Lah 227

ed—Meaning of *Sale*

ACT, S 2 (a) (ii) AND

I L R (1940) Kar 370

## II—SELECT ENGLISH CASES.

**APPRENTICESHIP**—*Infant apprenticed to partnership—Dissolution of partnership—Termination of apprenticeship—Liability of partners for breach of covenant*

By dissolving a partnership (to which the plaintiff was apprenticed) the partners rendered selves unable to carry out their covenant towards the infant plaintiff

*Held*, the infant plaintiff and his father are entitled to damages for the breach

*Brace v Cadler* (1895) 2 QBD 253 (a case of master and servant) applied *TITMUS v ROSE*

56 TLR 337—162 LT 304—  
(1940) 1 All ER 599

**ARBITRATION ACT (1889) (c 49), S 4—**

*Suit on contract with arbitration clause—Defendant filing affidavit opposing application for leave to sign final judgment under R S C, O 14—Whether 'step in the action' precluding defendant from latter relying on arbitration clause*

In an action on a contract containing an arbitration clause the writ was specially endorsed and the plaintiff put in an application under R S C O 14 for leave to

*Held*, the defendants had taken a step in the action and were precluded from relying on the arbitration clause

[Cf S 19 of the Indian Arbitration Act (1<sup>st</sup> of 1899)]  
*PITCHERS LTD v PLAZA (QUEENSBURY) LTD*

56 TLR 257—162 LT 213—  
(1940) 1 All ER 151 (CA.)

**BANKING—Undated cheque—Right to fill in date—When to be exercised**

An undated cheque is not an instrument which the banker on whom it is drawn is bound to honour. But a person in possession of such a cheque must exercise his *prima facie* authority to fill in the date within a reasonable time. The question what is a reasonable time is a question of fact. *GRIFFITHS v DALTON*

1940 WN 227—56 TLR 784—(1940) 2 KB 264

**BANKRUPTCY—Discharge—If release of claim for future rents after date of proof**

A lessor seeking to prove against a bankrupt lessee's estate in respect of an existing lease can only prove for the arrears of rent due and the breaches of covenant which have taken place, up to the time of proof. The discharge of the bankrupt had no effect with regard to future rent under the lease (which is not provable in insolvency) and consequently the lessor is entitled to recover the future rents. *METROPOLIS ESTATES CO., LTD v WILDE*

(1940) 2 KB 538—  
(1940) 3 All ER 522 (CA.)

*Trustee under abortive deed of assignment for benefit of creditors—If entitled to retain from profits of business expenses incurred against trustee in subsequent bankruptcy*

## BILLS OF EXCHANGE

meeting of creditors was held and the majority of creditors were not in favour of the deed. On November 24 1938 a creditor presented a bankruptcy petition and a receiving order was made on January 5, 1939 and on February 1 the bankrupt was adjudicated. On January 25 the applicant was appointed trustee of the debtor's property. When the respondent was called upon by the trustee in bankruptcy to hand over the collections he had made the respondent sought to retain from the profits of the business, the amount which he was out of pocket in carrying on the business.

*Held*, the respondent expended the money entirely at his risk and the trustee in bankruptcy was entitled to the whole amount. *Re ZAKON TRUSTEE IN BANKRUPTCY v BUSHETT* (1940) 1 Ch 253—  
1940 WN 38—109 LJ Ch 118—56 TLR 312—  
162 LT 181—(1940) 1 All ER 263 (Ch. D.)

*Trustee under deed of assignment—Orders placed by trustee for materials in respect of the debtor's business—Liability*

The trustee under a deed of assignment by a builder—placed some orders for materials signing the orders as "trustee". In a claim for the value of the materials supplied

*Held* the mere addition of the word "trustee" by itself will not be sufficient to operate as a limitation of the liability which would otherwise arise on a person who under a contract such as this makes himself liable for the supply of material. The fact that the plaintiff was a creditor and a party to the trust of the estate did not alter the liability under the contract which was disbarred. *HUNT BROS v COLWELL*

(1939) 4 All ER 406 (CA.)

**BILLS OF EXCHANGE—Acceptance in payment of price of machinery—Suit against acceptor by agents of foreign drawee—Defence of partial failure of consideration—Right to set off amount claimed as damage for machinery not being according to the terms of description—Partial failure—If can be pleaded against the holder**

In a suit against the acceptor of certain foreign Bills of Exchange it was contended by the defendants that the bills were accepted in payment of price of certain machinery and which proved to be not according to description—there was partial failure of consideration and that defendants were entitled to claim right to set off the loss and damage sustained by reason of the machinery not being according to description as plaintiffs who was agent for collection contended that such a defence cannot be set up against a remote party and the defence ought to be struck out.

*Held*, it is impossible to say that such a defence does not disclose any reasonable cause of action. Defendant should not be prevented from

## BILLS OF EXCHANGE

claim of set off. *HARRIS & CO. v. VALLERMAN & CO*

## CLUBS.

that the accident was not caused by negligence is as

*Effect on rights of plaintiff who*  
*course.*

In a defence (by the acceptor) which seeks to repudiate liability upon a contract in a bill of exchange by reliance upon the allegation that such a contract was entered into under a mistake of fact it is necessary to

(1940) 1 K.B. 812 = (1940) 2 All E.R. 46 (K.B.D.).

—Charter party—Frustration by accident to ship  
—Onus of proving whether frustration was or was not self-induced.

entitled to succeed *AYRES v. MOORE*.

(1940) 1 K.B. 278 = 1939 W.N. 392 =  
109 L.J. (K.B.) 91 = 56 T.L.R. 145 =  
(1939) 4 All E.R. 351 (K.B.D.)

**CHARTER PARTY**—Charterer to stow under supervision of the captain—Liability for improper stowage  
—Club rule restraining assignment of shipowner's insurance rights—Effect on charterer's right to recover.

Where a charter party provided that "C

owner (who is in a position to obtain indemnity against force.

—Charterparty—Frustration by accident to ship  
—Onus of proving that frustration was or was not self-induced.

The claimants (the charterers) claim damages for

—Charterparty—Unseaworthy condition of ship—  
Loss caused by—Owners if entitled to recover general average loss

Where the dominant cause of the loss was the unsea

tled, therefore, to rely upon it

*Held*, as a general rule a party seeking to recover compensation for damage against whom he complains have proved destruction of the ship, the tribunal that the ship claimants. Whether such must be judged by applying

64 Ll.L.R. 94 = 109 L.J.K.B. 42 = 162 L.T. 11 =  
(1939) 2 All E.R. 855 (O.A.)

## COMPANIES

1910 W.N. 73-109 L.J. (K.B.) 288-  
58 T.L.R. 401-162 L.T. 305-101 J.P. 171-  
(1910) 1 K.B. 576-(1910) 1 All E.R. 454 (K.B.D.)

**COMPANIES**—Articles of association not in accord  
ance with intention of signatories—Rectification—If  
can be made by Court

The Court has no jurisdiction to rectify articles of  
association, even although it should be proved that the

Articles of association providing that minutes  
book should be conclusive evidence of facts stated  
therein—Other evidence inadmissible to disprove such  
facts

the events with a view to setting up a story which was  
not in accordance with facts. But where the minutes is

**Companies Act 154—Dissolution—Transfer**  
of property, rights and liabilities to new company—If

removes director—Exercise of power—Liability of com-  
pany for breach of implied term

The S.F. Company agreed by contract of 21st  
December 1933, to employ the plaintiff as managing  
director (for which he had to be director also) for ten  
years and the company could not remove him under the  
articles of association of the company. In April 1936,  
the company altered its articles which gave power to F.  
F. Ltd. (who had acquired financial control of S.F. Co.)  
to remove any director of S.F. Company and also pro-  
vided that the appointment as managing director should  
determine if he ceased from any cause to be a director.  
On 25th March, 1937, L.F. Ltd. exercised the power to  
remove plaintiff from being a director of S.F. and (the  
facts his managing directorship ceased). In a claim for  
damages for breach of contract,

## COMP CLAUSES (CONSOLL.) ACT (1845) S 35

the breach of contract by S.F. company and the defen-  
dants are liable for damages for breach of contract  
SOUTHERN FOUNDRIES v. SHIRLAW

1910 W.N. 167-56 T.L.R. 637-  
(1910) A.C. 701-(1910) 2 All E.R. 415 (H.L.).

Stamped proxies sent only to holders of stock  
of over £2,500 following the practice of the company—  
Object to ensure quorum—Smaller holders if legally  
entitled and enforce it

ask to the amount of  
did in practice was to  
ers who hold stock to  
The object was to  
h was very large. It  
will take a good many stock holders of stock  
valued at less than £2,500 to make the necessary quorum.  
In a claim by smaller stockholders claiming similar  
rights,

1910 W.N. 98-56 T.L.R. 436-162 L.T. 409

Directors acting without requisite number of  
ability for statutory penalties—  
proceedings—Discretion of

duction of capital of the  
ceased to hold the requisite  
number of qualification shares but continued to act as  
directors. Proceedings were commenced against the

directors of share holders of other companies trading  
with the defendant company—If precluded from acting  
as directors of the defendant company

The plaintiff a stockholder in the company claimed  
a declaration that directors of the defendant company  
who are directors and trustees of other incorporated  
joint stock companies trading directly and indirectly  
with the defendant company are precluded from acting  
as directors of the defendant company and their office  
has become vacant. The directors were not made defen-  
dants to the action.

Held (1) the declaration cannot be made in the  
absence of the directors and without giving them an  
opportunity of being heard in their own defence, (2)  
What the Act contemplates in S. 35 is that H.L.  
persons who are concerned in one transaction with  
another company shall be liable as directors of that  
company.

**COMPANIES ACT (1929), S 135**

in a company which enters into a contract with the defendant company such shareholder may nevertheless

provisions of Municipal Corporations Act applied  
**WILSON v LONDON MIDLAND AND SCOTTISH RAILWAY** (1910) 1 Ch 169—

affirmed by CA in (1910) 1 Ch 393

**COMPANIES ACT (1929) S 135—Inquiry into companies affairs by inspector appointed by Board of Trade—Examination of managing director—Presence of shorthand writer—If necessary—Refusal to answer question in his presence—Contempt of Court**

A managing director, summoned by the inspector appointed by the Board of Trade to investigate the affairs of the company under Companies Act (1929), S 135 refused to answer questions so long as any person (here a shorthand writer) other than the inspector was in the room

*Held*, if it is a fact, that a shorthand writer to take down the proceedings as a record for the inspector's use in preparing his report is necessary then there is no question but that the inspector is entitled to have the shorthand writer present. The managing director is in effect guilty of contempt of Court. *Heart of Oak*

*up—Practice—Affidavit evidence of fact and belief—Probative value*

Where a company is in voluntary liquidation a creditor is entitled *ex debito* for compulsory winding up and he is entitled if winding up upon voluntary liquidation

*Clouston, L J*—Where the one opposing the winding up I would place but little reliance upon the affidavit of a liquidator founded on informa-

**CONTRACT.**

under S. 91 (19) of the British North America Act

**CONTRACT—Arrangement for shipment of oranges to plaintiff a broker at London, reduced to writing—If term as to merchantable quality when the oranges arrived in London can be implied in the contract, to give business efficacy.**

The plaintiffs had acted as brokers for the defendants on the terms that the defendants would ship and after shipment would draw upon the plaintiffs for a certain sum as guaranteed advance per case of the oranges shipped. The goods would then be sold after their arrival in London and the advance adjusted. Before the season for shipment of oranges a letter confirming an oral arrangement was written by the defendants to the plaintiffs and it was agreed to supply during the season 1936 37, 40 000 cases of *Ophir* oranges on certain terms. When some of the consignments were found to be in an unsaleable condition, and plaintiffs were not able to recover the guaranteed advance. Plaintiffs claimed that a term that the goods should be in a saleable condition in London must be implied into the contract and claimed as damages for the deficiency in

*C I F contract for purchase of timber—Insurance—Increase of premium for covering war risk cargo in for increase*

timber there increase in value during time of war owing to increased demand of the war excess

rate for scheduled OULO LAVER

415—(O A) being a position Ltd. is based on the fact of C

In path and substance it relates to 'interest' a subject | Bros Ltd. and the principal stock holders in it. The

## CONTRACT.

price was much above its market value. The Connors (respondent and his father) and the Mc Leans agreed to work for the benefit of the stock holders of the two companies. The respondent and his father covenanted not to use the name of Connors in any country business in any country years. On the death of the respondent proceedings by a declaration whether which he challenged as in restraint of trade and bad for uncertainty.

*Held*, (1) The phrase "directly or indirectly engage in the sardine business" is not void for uncertainty (2) On the facts the covenant restraining the respondent from engaging in such business was enforceable and binding. Tests for ascertaining validity of covenants in restraint of trade reviewed. **CONNORS BROS. LTD. v CONNORS** (1940) 4 All E.R. 17 (P.C.)

—Damages for breach of contract—Transport certain machinery for a week—Proper measure of damages.

The plaintiffs were undertook to transport a "scraper" from one work delay of one week plaintiffs claimed damages for the work for which would have been finished earlier or that there was any loss of profits.

*Held*, plaintiffs were entitled to recover damages for depreciation interest machine and wages (1939) 3 All E.R.

to experts for superintendence. All these heads were not "indirect or consequential." **SAINT LINE LTD. v RICHARD SONS WESTGARTH & CO. LTD.** 58 T.L.R. 718-67 L.L.B. 62-(1940) 2 K.B. 89

—Hire of deck chairs—Ticket or receipt for the hire with conditions on it—If contract subject to the conditions

liable for damages. **CHAPELTON v BARRY URBAN**

Principal is entitled to recover money paid to agent—*Ex turpi causa non oritur actio*—Applicability

## CONTRACT

A principal seeking to recover from his agent money which he handed to him for an illegal purpose (to bet with street book-makers in defiance of street Betting Act and in a conspiracy to make a sham bet on the no better case, when or equity then the payments made by contract for an illegal the Courts order the

repayment of the money. **HARRY PARKER LTD. v MASON** (1940) 4 All E.R. 199 (O.A.)

—Sum payable in a foreign country in currency of that country—Claim for—If for debt or for damages for breach of contract—Date on which rate of exchange to be calculated—Jurisdiction—Cause of action arising in other country—Plaintiff and defendant foreigners domiciled in England—Jurisdiction

A sum payable in a foreign country in the currency

—Warranty—Hair dresser selling hair dye and applying it on client—Hair dresser showing misstatements and brochures that he other dyes—Client develops to presence of acid in the dye—

showed the advertisement and brochures and that she had not tested it. Plaintiff gave the dye a trial and immediately developed a sharp attack of dermatitis owing to the presence of 10 per cent of acid in the lotion instead of 4 per cent.

*Held*, in transactions as this, which is really half the rendering of service and in a sense half the supply of

sum for any injury the consumer may sustain as a result. The duty is there at the thing they are as which is dangerous

standard of care is demanded. It creates a duty on any person by whom the article is



## COPYRIGHT.

consumer who is ultimately injured by reason of some

fringed by a figure in three dimensions such as (brooches) or charms, plaster dolls and mechanical to be immaterial whether the infringing article directly or indirectly from the original standard is objective and the test is whether original work or a substantial part thereof produced. If it has been it is no answer

[AFFIRMED BY C. A. IN] (1940) 1 Ch. 480—  
(1940) 3 All E.R. 484 (C.A.)

—Music—Performing rights—Consent or licence  
for—If includes right to broadcast.

Appellants' pamphlet stated 'We have paid for the per-

Where a claim is admitted in the defence and a counterclaim set up which succeeds the plaintiff is not entitled after that admission to any costs relating to the claim except the footing litigated.

H. & H. TRADING AGENCIES, LTD  
(1940) 1 All E.R. 587 (C.A.)

—Solicitor's lien—Charge  
incurred in recovery of property.

Where solicitors had acted on behalf of the estate (defendants' administration of the estate of an deceased) some property deeds were brought into Court, the charging order for all the costs of the proceedings, the charging order of

## CRIMINAL TRIAL.

On 2nd September, 1912, the accused married P and she was born on 18th May, 1915. The accused was the wife during week ending August, 1914, 9 was associating

On 10th July, 1918, accused married G and the

that he was not the father of Soma. The Judge held Russell v. Russell, made the question inadmissible. Then accused in giving evidence for himself sought to prove that at the time of the offence charged he knew he

whether essential for conviction

The circumstances in which an accused receives goods may of themselves prove that the goods were stolen and that the accused knew that the goods were stolen. It

CRIMINAL LAW—Confession by prisoner alleged to have been obtained by improper means—When prisoner

## CRIMINAL TRIAL.

*Held*, nothing has arisen *ex improbo* justify the calling of fresh evidence. For

the start The conviction must be quashed. *R v DAY*  
27 G App R 168=104 J P 181=  
(1940) 1 All E R 402 (C C A)

—Evidence given by one prisoner likely to incite  
other prisoners—If separate trials should be  
ordered

The mere fact that some of the accused in their state-  
ments or evidence in the course of excusing themselves  
made observations which might have the effect of  
throwing blame upon others who were in the dock is no  
sufficient reason why the trials should be separated.  
This was not evidence tendered by the prosecution or  
evidence on which the jury was called  
and there was no necessity to warn the  
evidence was of accomplices needing

*R v BARNES* (1940) 2 All E R 229 (C C A)=  
56 T L R 379=27 G App R 154

—Unsworn evidence of child witness permitted—If  
vitiates the conviction

It is not a rule of law that if in a case where un-  
sworn evidence of a child has been adduced and the

—Ambiguity in notice to creditors—Effect

The vendors of certain goods placed a rubber stamp in  
their invoices as follows: "To facilitate our accountancy  
and banking arrangements it has been agreed that this  
invoice be transferred to and payment in London funds  
should be made to James Talcott Ltd, London. Errors  
in this invoice must be notified to James Talcott Ltd,  
immediately." The vendee paid the amount of the  
invoices to the vendors. Talcott, Ltd, intervened and  
made a claim that the debt represented by those invoices  
had been assigned to them and that the vendees had  
been given notice thereof.

*Held* (Goff J dissenting).—The vendee was  
not liable to pay the amount again to the assignees, as  
the language of the notice was not sufficiently plain that  
the debt had been assigned to the third party TAL-  
COTT LTD & LEWIS & CO LTD

(1940) 3 All E R 692

DEED—Settlement executed by one party—Failure of  
other party to execute or give release deed—Effect—  
Settlement—If revocable

Where there is an absolute and unconditional settle-  
ment it takes effect at once by the act of the settlor's  
executing it. This is complete when he delivers it as  
his deed. Consideration is not necessary and the settlor  
cannot revoke it. In the present case the Court of  
appeal held that the settlor executed the settlement on  
the faith that the settlor's wife would execute it and give  
a release for which he stipulated and since she had not in  
fact executed the deed and eventually returned it un-

## DIVORCE.

bind in equity The House

of the Court of Appeal

DEFAMATION—See TORT—LIBEL AND SLANDER  
(1940) 1 All E R 1 (C A)

DIVORCE—Decree nisi—Petitioner's adultery before  
petition not disclosed—Interdictum—Discretion of  
Court—Public policy

A husband obtained a decree nisi on the ground of  
desertion without disclosing his own adulterous associa-  
tion with another woman of whom he had children. On  
the King's proctor intervening

*Held*, though the petitioner's conduct in deliberately  
deceiving the Court was most reprehensible, and public

policy should be discour-  
aged, he rescinded and the  
circumstances of  
the association  
with the woman turning into a happy married home  
should not be frustrated and in this case the public policy

matrimonial offence of desertion. *MANSEY v MANSEY*  
1940 WN 156=56 T L R 676=  
(1940) P 139=(1940) 2 All E R 423 (P D A)

—Desertion—Clause inserted by inadvertence  
by the clerk in maintenance order by Magistrate against  
husband that wife not bound to cohabit with husband—

by a  
the  
and to  
cohabit with her husband the defendant was not bound  
out and the order served on the husband. Subsequently  
in the wife's petition for divorce alleging desertion

*Held* the order so far as at all material times, the  
petitioner (the wife) cannot satisfy the requirements of  
the statute as to the period of desertion when the order  
was

—Desertion—Deserted spouse in mental hospital at  
commencement of desertion and during part of the three  
years prior to petition—Effect on the period of desertion

In August 1931 the wife who suffered from mental  
infirmity had to go to a hospital where she was trans-  
ferred in February 1932 to a mental hospital where she  
remained till September 1934. When she came out to  
the world again, about July 25 1935 the husband  
went off and never saw his wife or offered her a matrimonial  
home. The wife filed a petition on November

## DIVORCE.

23, 1938, for divorce on the ground of desertion for three years

*Held*, the fact that the wife was in the mental hospital during part of the three years period does not prevent her from alleging that her husband deserted for the st—

—Desertion—Husband and wife living separate in parts of same house (without physical separation between the parts)—Refusal by husband of suggestion for

desertion and is not one in which the wife is precluded from asserting desertion on the ground that she were

—Desertion—Presentation and service upon deserting spouse of petition for dissolution of marriage—Effect on period of desertion

necessary period must be the particular case  
COHEN v COHEN

—Period of six months absolute—Adultery—Effect

The six months in the decree absolute is a test of that kind King's Proctor to make the petitioner's case stronger subsequent to stand in the way of  
REEVES v REEVES

1940 P. 28=1939 W.N. 401=66 T.L.R. 118=162 L.T. 142=109 L.J. (P) 33=(1939) 4 All E.R. 378 (P.D.A.)

—Petition for decree of nullity on the ground of husband's impotence—Defence of lack of sincerity—Limits

In a petition by a wife for declaration of nullity on the ground of the impotency of her husband the husband contended that the petitioner was guilty of want of sincerity in presenting the petition.

*Held*, that the "sincerity" with which the Court is concerned has reference only to the sincerity of the plea and has nothing whatever to do with either (a) the general character of the petitioner as a sincere or in

## ELECTION.

Court is concerned only with the question whether since her marriage the petitioner has been guilty of any conduct which ought to estop her from having the remedy she seeks NASH v NASH.

1940 P. 60=1940 W.N. 24=56 T.L.R. 274=(1940) 1 All E.R. 206 (P.D.A.)

—Discovery—Respondent in her cross husband's association with named to her adultery—Respondent disclosing some documents and asking for further affidavit of documents from the husband—If discovery to be ordered

ral documents bearing on the alleged association and applied for a further and better affidavit from her hus-

he face of it and that it should be question of every should be (1940) P. 90=1940 W.N. 35=162 L.T. 152=109 L.J. (P) 37=(1939) 4 All E.R. 629 (C.A.)

—Wife's legal cruelty—What constitutes

arious cigarette spec- disclosed material which to bear ly On the evidence, legal cruelty entitling the husband to HORTON v HORTON 1940 W.N. 258=(1940) P. 187=(1940) 3 All E.R. 380 (P.D.A.)

erosion *Held*, the defendant had used the land naturally and is not liable for the destruction of the natural lateral support of the plaintiff's land by operation of natural forces The plaintiff had no cause of action ROUSE v GRAVEL WORKS, LTD. (1940) 1 K.B. 483=66 T.L.R. 225=162 L.T. 230=(1940) 1 All E.R. 26 (C.A.)

ELECTION—Commencement of action based on contract—Action not proceeding to judgment—Subsequent action on same facts based on tort against third party—If barred

In November, 1934, certain debtors sent to the plaintiff company an order cheque for £1,900 £, the Secretary of the plaintiff company without authority, the plaintiff company in M.F.G. paid the cheque to who collected the money.

## FATAL ACCIDENTS ACT

It was a simple case of conversion by E and MFG and if the matter stood there not only MFG but also the defendants would be liable in conversion for the amount of the cheque. On May 13 1935 plaintiffs issued a writ against MFG for the £1,900 as money lent or as money had and received to the plaintiff's use. MFG went into liquidation and a proof by the plaintiff for the amount was not admitted as the funds available were

*dying before trial of action for damages—Effect on assessment of damages*

The Courts in doing justice on questions of damages are entitled to inform their minds by the date of the death of the deceased. It is not light to say that before trial the Court cannot shut its eyes to the fact that one dependant had or her dependence was brought small amount ought to be dependant WILLIAMS & CO

## HIGHWAYS—Duty of

Degree of care required—

on common law duty—See

*plaintiff on a night—Liability for damages*

The main object of that case was to lay up of taking

## INCOME TAX

by the decree or order of a Court, the husband need prove no more than the date of the decree or order and the date of birth of the child. If it must have been conceived after the date of the decree or order, there is a *presumptio juris* that it is a bastard. The wife may rebut that presumption if she can, but she must do it by evidence other than her own, (b) where the parties have voluntarily separated, whether by deed, writing under

d from con  
non access,  
open to him  
tion is that  
ads evidence  
but cannot  
legitimacy.  
/ in (1939)  
to House of  
D  
J (P) 41=

*Held, the payment was one arising from the assessee's*

*substitution that arose to closing of that*

received.  
If it, he was entitled to the deduction claimed  
HYETT & LEANARD (1940) 2 KB 180=  
(1910) 3 ALL E.R. 133 (K.B.D.) = 56 T.L.R. 706=  
1910 W.N. 214

*Bonus shares issued out of a accumulated undistributed profits of company—Value of shares to be included in income of shareholder.*

was shares are issued out  
ated profits of a com  
could be included i  
of the share  
OF TAXES C  
(1940)  
110 W.N.

ibility

It was found that the husband left his wife about August 6, 1935. Parties orally agreed to live apart, the husband making a weekly payment to his wife. The wife gave birth to a child on May 26, 1937. The question arose whether the husband could give evidence of non access.

*Held, (1) The rule in Russell v Russell that evidence*

## INCOME-TAX

*Business sold as going concern—Purchaser executing orders booked by seller—Profits of—Liability to assessment.*

A business was sold to a Limited Company and it was provided that the company should execute the orders unexecuted by the vendor, as his agent and pay the vendor 75 per cent of the gross profits or commissions. The money so received by the vendor was not capital but income and liable to assessment. **SOUTHERN v WATSON** (1940) 3 All E.R. 439 (C.A.).

*Company having controlling interest in subsidiary company—Losses of subsidiary company—Principal company writing off such losses by reducing the charges due to them from subsidiary for work done—If entitled to deduction.*

Company by reducing the amounts which had been charged by them against the subsidiaries for work done on trading account and deduction was claimed for income tax purposes.

pany's trade or business and there can be no deductions. **ODHAMS PRESS, LTD v COOK**.

(1940) 3 All E.R. 15 (H.L.) = 56 T L R

*Company—Shares issued to employees at remuneration for services—Premium which the shares would have brought to the company if issued to public—If deductible against profits.*

A company by special resolutions increased its share capital by the creation of certain redeemable preference shares and 400,000 new ordinary shares of 5s each and 10,000 of such shares were reserved for issue to the employees of the company. 6,000 of these shares were allotted to the employees at par as services rendered. If issued to the public they would have obtained a premium of 10s. In a claim to deduct such premium

## INCOME TAX.

R. 454 (C.A.), affir. **UNITED STEEL COMPANIES, LTD v CULLINGTON**. (1940) A.C. 812 =

56 T L R 550 = 109 L J (K.B.) 342 = (1940) 2 All E.R. 170 (H.L.)

*Finance Act 1926, S. 32 (2)—Merger of manufacturing parent and subsidiary companies—Liability of parent company to tax as successor to business of subsidiary company.*

On the liquidation of six wholly owned subsidiary companies the business was transferred to the parent company and the parent company instead of manufacturing and supplying steel bars to the subsidiary companies to be made into tin plates began to make the tin plates themselves.

56 T L R 248 = 109 L J (K.B.) 250 = 162 L T. 202

*Insurance providing for annual payments in consideration of a single premium—Annual payments*

of the capital invested.

*Mining claims in Africa acquired by English company for development and sale—Sale of undertaking in England at profit—Capital appreciation—Liability to assessment in Africa as receipt within that territory.*

The appellant company was incorporated on 30th March 1925 as a private company with a nominal capital of £100,000.

On 20th January, 1931, the company purchased certain others to the value of £200,000. On 1st January, 1932, the company sold them for £37,500.

On 20th January, 1931, the company purchased certain others to the value of £200,000. On 1st January, 1932, the company sold them for £37,500.

panies relief was now claimed by the amalgamated company.

*Held*, the new company cannot claim the right to deductions in respect of the losses and wear and tear of the old companies. (1939) 1 K.B. 644, (1939) 1 All E.R. 101.

the particular receipt). The receipt is liable to assessment in Rhodesia. **RHODESIA METALS v. TAXES COMMISSIONER** (1940) A.C. 774 =

(1940) 3 All E.R. 422 (P.C.) = 1940 W.N. 222 = 56 T L R 799.

## INCOME TAX.

—*Mutual society providing its members (who have to pay premiums) with weekly payments in the event of sickness—Amounts received by member—Liability to tax.*

Sums payable by a mutual society to its members under their individual contracts with the mutual society are to be considered on the same basis as are similar contracts with a proprietary company. If they result in annual payment or payments of annuities the recipients are taxable in respect of those annual payments or annuities. The payment on continuance of pay does not prevent the tax.

FORSYTH v THOMP

—*Partnerships—Assessment.*

Where a fresh partnership is constituted by the taking of a new partner,

MISSIONERS *Ex parte GIBBS.*

(1910) 3 ALL E 613 (O A)  
—*Payment for obtaining licence for monopoly of selling beer and wine—If deductible from profits for assessment.*

A licence was granted to the assessee for sale of beer and wine and the amount settled as the monopoly value was £75 p annual instalments.

Held this sum is a capital that it is payable in instalments does not prevent instalments from being capital for the sum cannot be allowed as a deduction against the assessment in each year. KNEESHAW v ABERTOLLI (1910) 2 K B 295 = (1910) 3 ALL E 600 (K B D) = 1910 WN 258

INSURANCE—*Double insurance clause—Letter in premium—Lessors also insuring for raising loan—If "double insurance".*

A clause in a Lloyd's policy of fire insurance provided

policy or policies had this insurance not been effected

ance company contended that it was a case of double insurance under the clause.

Held as the insurance taken out by the lessors was not with any intention of giving a present interest in it to the lessees no double insurance has been created. PORTAVON CINEMA CO LTD v PRICE

45 Com. Cas 93 = 161 L T 417 = 65 Ll L Rep 161 = (1939) 4 ALL E 601 (K B D)

—*Indemnity against "all loss"—Due to embezzlement by employee.*

Where the policy is not a fidelity and indemnity policy against certain carefilities, on a true construction of it caused by embezzlement by an employee brought within the policy. GODDARD FREW

161 L T 408 = 45 Com Cas. 78 = 65 Ll L Rep 83 = (1939) 4 ALL E 358 (O A)

## INSURANCE

—*Indemnity in favour of three persons in respect of respective rights—Claim by one—Cheque in payment in name of all three endorsed by them to claimant—Subsequent claim for recovery of amount on the ground that claimant was not entitled to indemnity as property insured was lawfully set fire to by assured's servant—Payees of the cheque if liable.*

An insurance policy indemnified three persons for their respective rights and interest. After a fire there was a claim for the amount of the insurance.

endorsed the cheque to the real claimant were not the recipients of the amount and were not liable for repayment.

—*Insurance of goods while "in store"—Furniture packed in lift vans placed in yard at depository—If "in store".*

The plaintiff's furniture which was being forwarded

Held, the goods were in store and the insurers were liable. WULFSON v SWITZERLAND GENERAL INSURANCE CO, LTD

56 T L R 701 = (1910) 3 ALL E 221 (K B D)

—*Marine insurance against loss of freight—Loss of freight due to impossibility of repair to complete the voyage, and constructive total loss of freight arising therefrom—Liability of underwriters.*

ance provided. In case of constructive total loss of cargo the cargo was severely damaged and she had to be beached. It was alleged that it was

after repair and so it was abandoned. In a claim on the insurance policy for loss of freight against the underwriters on a preliminary issue of law,

Held if the ship was abandoned because although the ship could be repaired the cost of permanent repairs would have exceeded its repaired value the loss of freight did not arise from constructive total loss. But if it was not a matter of expense and if the ship could

—*Motor insurance against third party risk—Exclusion of indemnity against claim by "any member"*







## MASTER AND SERVANT.

Month of June when dances were to be held - the -  
 mises The Justices held that th  
 was a complete bar to grant of such  
*Held*, the word "occasional" do  
 complete bar to the grant of applications made regularly.  
 CHANDLER v EMERTON (1940) 2 K B 261 -  
 (1940) 3 ALLER 146 (K B D)

## MASTER AND SERVANT.

elect  
 of ev  
 loquit  
 An  
 ascended a pole carrying a linewire for placing another  
 wire in position Near the top of the pole he was elec  
 trocuted and died immediately In a claim against the

## MORTGAGE

2 K.B. 187:  
 to perform  
 suspend his  
 cannot be  
 any statement of any principle of the common law It  
 is a pure question of fact in every case If one is to  
 ascertain the implied terms one has to ask one-self "If

the course of common employment—Action at common  
 law against employers for  
 as there was only one cause  
 in prior proceedings

A servant injured by  
 servant having a  
 had two courses  
 cause of action  
 which the defence (common employment) would be avail  
 able to the employers but he could claim  
 damages, or (ii) to raise that cause of action in  
 ings under Employers Liability Act, 1880,  
 the defence of common employment  
 be denied to the employers but  
 could not be recovered above a fixed  
 the cause of action under Employers  
 has been completely satisfied the emp  
 on the other set of proceedings under common law and

First mortgagee exercising power of sale and  
 paying over a larger balance to second mortgagee—  
 Right to recover as money overpaid under mistake of  
 fact.

Plaintiff, a first mortgagee having exercised his power  
 of sale, by mistake presented to the defendant the

ill and claimed full wages as of right

*Held*, that the arrangement that when ill he was to  
 take half pay, whether as  
 uly  
 the tr  
 temp  
 = (15  
 517g

Servant's right to wages during absence due to  
 illness.

Redemption—Provision for redemption in  
 eighty half yearly instalments—If clog an equity of

cent interest per annum repayable over a period of  
 forty years by half-yearly instalments, the whole money



## PRACTICE.

—Costs—Exercise of discretion contrary to the rules which have statutory sanction—Power of

—Defendant who had not entered appearance in time appearing at time of signing judgment and attempting to enter appearance—Judgment by default—If can be passed.

In an action on a mortgage the defendant had not entered appearance within time but received notice of application for leave to enter judgment in default of appearance. On the day fixed he wanted to enter appearance.

Held, a judgment ought never to go in default of appearance when the defendant is before the Court and whether he has technically appeared or not is there and anxious to put himself in a position to defend. *RED*

—Receipt of amount allowed under award by workman—If 'election' barring right of appeal as to portion disallowed.

The doctrine of 'election' is applicable only to cases arising under wills and deeds and other instruments inter vivos. It cannot apply to judgments or awards. Payment by a defendant of what has been found to be due

Appellant can appeal against a part of the award. Receipt of the amount awarded did not amount to election to bar the right of appeal. *Johnson v. Newton Fire Extinguisher Co., Ltd.*, (1913) 2 K B 111 Over. *LISSENDEN v. BOCH, LTD.*

on the 1 after—

An order "And payed £ 1940, and 10s. per month thereafter." The first payment was made on 1st February and the next payment

## PRINCIPAL AND AGENT.

there was no default. Held, the word "thereafter" refers to the date on

property to Government—Agent employed to find a purchaser is entitled to commission

The plaintiffs, a firm of house agents had been asked in 1933 by the defendants to find a purchaser of their premises. The attempt to sell came to nothing. The defendant was not willing to sell at less than £ 12000 to Colonel (introduced by plaintiff's another agent) who was really investigating directly or indirectly on behalf of the war office. Later, the war office requisitioned the whole estate under statutory powers and the arbitrators fixed the price for such purchase between £ 7000 and £ 8000. In a claim by plaintiffs firm for commission.

Held, (reversing the decision of *Lewis, J.*)

upon them by the defendants. *Toulmin v. Miller*, 12 A.C. 746 applied. *HODGES AND SONS v. HACKBRIDGE PARK HOTEL LTD.*

(1939) 4 ALL E R 347 (CA) = (1940) 1 K B 404 = 1939 WN 389 = 56 T L R 128 = 162 LT 74 = 109 L J (K B) 190

—Contract to pay commission on completion of sale of property of company—Introduction of willing purchaser—Sale of shares in the company to another company instead of sale of property—Right of agent to

on completion of sale a procuration fee of £10 000 to plaintiff and E who were subsequently instrumental in bringing about the introduction of a prospective

ignore their contract of employment of the plaintiff and to prevent his earning his commission. The defendants

## PUBLIC AUTHORITIES

acted arbitrarily and in breach of an implied promise and plaintiff is entitled to damages £8 000 for the loss of the chance of earning the commission *COOPER v LUXOR (EASTBOURNE) LTD*

(1939) 4 All.E.R. 411 (C.A.)

**PUBLIC AUTHORITIES—Injury to prisoner on remand through deficit in china chamber in prison—**

severely and suffered damage

*Held*, the claim was one in respect of an act done by

*driver*

The respondent had permitted by his brother for purposes not covered by any insurance. A mother whose son was negligent driving of that van be anything from her decree against owner of the vehicle for breach Traffic Act, 1930 in permitting it for purposes not covered by any insurance.

*Held* the respondent was liable  
*MCLEOD v BUCHANAN*

(1940) 2 All.E.R. 179 (H.L.)

**SALE OF GOODS—Auctioneer providing funds for purchase of pigs—Purchaser removing pigs after sign**

by a farmer who before removing

*tender—Effect*

There was a contract dated 3rd August, 1933 for purchase of 15 000 quarters 2 per cent more or less of corn and an additional option to the sellers of shipping a further 3 per cent more or less. It provided for separate documents for each 1 000 quarters and that each 1 000 quarters was to be considered a separate contract. On 27th August 1938, the sellers wrote to the buyers "About 15,444 quarters corn have been

## SETTLEMENT

shipped per 'Genetton', bill of lading dated—which was appropriate in fulfilment of the above contract." On 6th September the sellers sent to the buyers a provisional invoice ".... of a parcel of No 2 yellow corn shipped per S S 'Genetton' from Albany to Hull sold to Bailey Son & Co, Hull as per contract dated 3rd August, 1931." After stating the contract quantity was 15 444 quarters it, in effect stated that there were

each On 8th September, 1938 the buyers insisted on arbitration upon the question as to whether or not they

WORD ABOUT ARROWS ONLY A VARIATION OF THE USUAL (7)

tender such contract quantity and held in favour of the buyers. On a special case *Branson, J.*, reversed the finding and held that the sellers were entitled to send the second invoice and that the buyers were not entitled to reject it. The Court of Appeal reversed the decision. The committee. The was an indivisible of the first invoice by the bare fact of

contract by  
*SMYTH & J (H.L.)—*  
*LE 825,*

cession by  
s perform-  
post  
and a con-  
self brought  
ending at  
for specific  
ance of the  
claim for  
*ARLBERG*  
*KB 1—*  
(1940) 2 All.E.R. 270 (C.A.).

**SETTLEMENT—Forfeiture—Provision for determination of life interest if income becomes payable to other person—Writ of sequestration—Effect**

A forfeiture clause in a settlement provided the event of the income becoming vested in or to "other person" a life estate was to issue of a notice of writ of

**SOLICITOR**

entitled to the life interest

*Held*, it resulted in a forfeiture *Re BARING'S*

**SETTLEMENT TRUSTS**

(1940) 3 All E R. 20 (Ch D) = 1940 WN. 207 =  
56 T L R 777

**SOLICITOR—Negligence in leaving conduct**

to managing clerk who caused to be filed  
inadequate affidavit of documents—If can be  
pay costs personally

A solicitor through his managing clerk (to

of justice by filing wholly inadequate and false affidavits  
of documents,

*Held*, (rever  
Appeal in (1938  
diction to order  
object of the C  
protect the clie  
the party who  
escape his liability by dissociating himself from the acts  
and defaults of his mismanaging clerk whose acts are to  
be treated as the acts of the principal It is immaterial  
that no professional misconduct is attributed to the soli  
citor personally *MYERS v ELMAN*

1939 WN 413 = 56 T L R 177 =

109 L J (K B) 105 = 162 L T 113 =

(1940) A C 282 = (1939) 4 All E R 484 (H L)

**SOLICITOR'S LIEN FOR COSTS—Extent of charge  
in partnership suit**

A solicitor in a partnership action is entitled to an  
order for taxed costs charges and expenses properly

56 T L R 731 = (1940) 1 Ch 650 =

(1940) 3 All E R 89 (Ch D)

**SPECIFIC PERFORMANCE—Contract by vendor  
of building sites to construct roads and sewers on land  
in his possession—Specific performance—When can be  
granted.**

D fendant who sold some building land to the plain-

and breach of the covenant by

**TORT**

of a legacy—Whether to be stamped as "conveyance or  
transfer on sale".

An instrument of transfer of certain shares appropriat  
ed by the execution of a will in satisfaction of a legacy  
left thereby to the transferee is chargeable with stamp  
duty as a conveyance or transfer on sale The substance

whether animal wild or domestic—If for Judge or jury

A camel in a Zoo having bit the plaintiff while visiting  
ages The  
mels are the  
There was  
this parti

The question  
to decide and not for the jury The Judge takes judicial  
notice of the ordinary course of nature—in this parti  
cular case of the ordinary course of nature in regard to  
the position of camels, among other animals The  
evidence was given merely to assist the Judge in forming  
his view as to what the ordinary course of nature in  
this regard, in fact is a matter of which he is supposed  
to have complete knowledge *MCQUAKER v GODDARD*  
(1940) 1 K B 687 = (1940) 1 All E R 471 (CA) =  
1940 WN 80 = 56 T L R 409 = 162 L T 232

Contract between landlord and tenant—Tenants'  
action advocating the withholding of rent to redress  
landlord—Liability for inducing

wrong The plaintiffs were the owners of a block of  
flats let upon tenancy agreements which were in standard  
form Each agreement containing *inter alia* (a) an  
obligation on the tenant to pay his rent and (b) certain  
obligations on the landlord including that of lighting the  
stair case and landings and keeping them properly  
cleaned and swept and of maintaining constant ho  
water and central heating There were 62 tenants in

complaint that landlords  
ying out their obligation  
into an association The  
cutive in forming the asso  
avouring to persuade their  
r agreements by withholding  
ned that they were justified

## TORT.

damages occasioned by a breach of statutory duty by the defendant to securely fence the saw. It was found on the evidence that the plaintiff knew that he could have avoided all risks by using the proper apparatus and that he failed to take reasonable care and his omission so to do must have been the effective cause of the accident.

*Held*, the contributory negligence of the plaintiff does not entitle him from the effect of a breach of duty to recover damages. **LEWIS v. DENYE**, [Affirmed by the House of Lords, 1900 (H.L.)]

—Damages for loss of expectation of life—Assessment.

In an appeal against the award of £1,200 as damages for loss of expectation of life in a road accident,

*Held*, (Steuart and J.)

## TORT.

Where a third party has been injured by the lack of repair of a house and the landlords had not covenanted to do the repairs, but had reserved a right to enter and do the repairs if they thought fit, that was sufficient to give the damaged third party a direct right of action against the landlord and it did not merely limit him to

*Biting plaintiff while attempting to rescue a cat attacked by hound—Liability*

Defendant's racing hounds, while taken out by two

consideration is what the plaintiff lost. She lost the value of the board and lodgings just as she lost her

wages and she is entitled to recover damages for loss. **LIEFFEN v. WAT** (1840) 1 K.B. 556

—Inducing another to commit a tort—Action.

The claim of the plaintiffs against the respondents was based on an allegation that they wrongfully and maliciously induced and procured one of the plaintiffs' employees to commit breaches of his agreement with

make any communication about the cheque to the

—Libel—innocence—Words not defamatory in ordinary meaning but capable of being understood in a secondary and defamatory sense—Proof that some person understood them in the defamatory sense—Whether

TORT.

The plaintiffs hair was not curly. Plaintiff alleged an innuendo that the words meant that she was a dishonest woman falsely representing herself to be, and passing as the wife of F H. and that she was an unmarried woman who had cohabited with and had children by F H.

Held, the words were capable of the innuendo and defendants were liable for damages. *HOUGH v. LONDON EXPRESS NEWSPAPER*

(1940) 2 K B. 507 = (1940) 3 All E.R. 31 (C.A.) = 56 T.L.R. 758

Label and slander—Headline in newspaper literally true—When capable of an innuendo

Plaintiff was charged as a test case with making return in that a particular entry was wrong. Plaintiff's auditors and legal advisers had given the opinion that a

and no evil consequences had followed  
no reason to apprehend danger and no  
take reasonable care. *FRASER WALLS v.*  
(1939) 4 All E.R. 609 (K.B.D.) =  
162 L.T. 138 = 56 T.L.R. 205

Held, having regard to the ambiguous if not the

AND ANOTHER. (1940) 1 All E.R. 1 (C.A.) = 1940 W.N. 9 = 109 L.J. (K.B.) 273 = 56 T.L.R. 195 = 162 L.T. 82.

Negligence—Building contractors and sub contractors

A head contractor does not workman of an invitor to an premises in the occupation and tractor but only as regards those remains in occupation and control. When the sub-contractors who made a hole (which caused the accident to the plaintiff) had before leaving the work covered it with boards and cement with

Negligence—Damages See also DAMAGES

TORT.

Negligence—Damages for loss of expectation of life and for pain and suffering—Quantum.

The plaintiffs wife aged 34 and in good health was fatally injured in a motor accident and after being unconscious for 4 days died. In a claim for damages by the husband under Fatal Accidents Act,

Held, damages for loss of expectation of life should be moderate and ought not to exceed £. 1000 in the case of adults. *MILLS v. STANWAY COACHES, LTD.*

(1940) 2 K B 334 = (1940) 2 All E.R. 586 (C.A.).

Negligence—Hair dye containing acid which is injurious—Liability of distributor to consumer who

servant or independent contractor of producer.  
In a claim for damages by a member of the audience

and no evil consequences had followed  
no reason to apprehend danger and no  
take reasonable care. *FRASER WALLS v.*  
(1939) 4 All E.R. 609 (K.B.D.) =  
162 L.T. 138 = 56 T.L.R. 205

car There was no driver for the car and whenever she and he alone was allowed was being used to convey party. The son was driven to her house and while in the son's house another car due to the son's negligence. The wife sustained injuries and claimed damages against her mother in law. It was contended that the wife cannot recover damages against her mother in law, because the accident was caused by the negligence of her husband and a third party.

does not deprive his wife of her right to recover against him

manufacture of con- injury caused by a wire

a piece of wire or steel in one of the sweets Flood

## TORT.

poisoning of some kind set in which affected his hand  
In an action for damages against the manufacturer

*Held*, that there was failure on the part of the manu-  
facturers to exercise the proper care which they ought to  
have exercised and in the circumstances there was  
negligence for which defendants were liable. *M. Dwyer*  
*(for Donoghue) v. Stevenson* (1932) 4 C 562, *Appl*  
*BARNETT v. PARKER & CO*

(1940) 3 All E.R. 575 (K.B.D.)

—*Negligence*—Pony attached to carriage left  
unattended—Injury to plaintiff attended by such animal  
—*Owners liability for damages*

The jury found that the defendant was  
leaving a pony attached to a carriage  
plaintiff was injured by the pony

*Held* A driver who knowingly leaves  
unattended is justly held guilty of a  
fault in the case fully justified the in-  
juries were directly caused by  
of the defendant's servant in leaving an impatient  
horse unattended for too long a time. *Cox v. Burdett*

—*Use of land for residential purposes*—*Noise etc.*—*Liability* See  
LEASE (1940) 1 All E.R. 131 (K.B.D.)

—*Nuisance and trespass*—*Damage to*  
*plaintiff's building by action of the roots of*  
*defendant's ground—Remedy of the plaintiff*

Where by the action of the roots  
planted in the defendant's ground there was draining of  
the clay beneath plaintiff's house and subsidence of the  
plaintiff's building the plaintiff has a right to cut the  
roots of the offending trees and is also  
cover damages if damages has accrued  
suffered by him owing to the action  
BUTLER v. STANTON

—*Passing*  
*right*—*Use of*  
*as title of*  
*copyright in*  
*Col 1268 FRANCIS DAY AND HUNTER LTD v*  
*TWENTIETH CENTURY FILMS LTD*

—*Passing*  
*right*—*Use of*  
*as title of*  
*copyright in*  
*Col 1268 FRANCIS DAY AND HUNTER LTD v*  
*TWENTIETH CENTURY FILMS LTD*

The plaintiff claimed that the name "Stanton" or  
"Genuine Stanton" was used upon or in connection with  
a particular pattern and design

## WILL.

v. CHURCH (A FIRM)

56 T.L.R. 513 =

(1940) 2 All E.R. 285 (C.A.)

—*Private nuisance*—*Originating from act of*  
*trespasser*—*Liability of owner or occupier for "con-*  
*tinuing" or "adopting" such nuisance*

Where an owner of property continues or adopts a  
nuisance created by a trespasser on such property, a  
neighbour affected by it is entitled to bring an action as  
and for continuation and adoption of such nuisance  
against the owner who does not choose to abate it.

*Per Viscount Maugham*—An owner of land "conti-

## SOCIETY FOR FOREIGN MISSIONS

(1940) 4 All E.R. 349 (H.L.)

—*Use by defen-*  
*to plaintiff's*

trade mark in  
(2) chemical

substance for use in pharmacy. Defendants carrying on  
business of manufacture and sale of medicinal prepara-  
tions issued pamphlets showing the exorbitant cost of

registered trade mark. BISMAG, LTD v. AMELINS  
(CHEMISTS) LTD (1940) 2 All E.R. 608 (C.A.) =  
1940 WN 200 = 56 T.L.R. 721

off supply, the water  
tap in the street but  
by some stranger,  
action for damages

plaintiff and the water  
supply company was constituted and the contract was to

of income-tax.

A gift was given to the plaintiff by the defendant  
in the form of a sum of money to be used for the  
purpose of the plaintiff's business. The plaintiff  
was a company and the defendant was an individual.  
The plaintiff claimed that the sum of money was  
given to it for the purpose of the plaintiff's business  
and that the defendant was entitled to a deduction  
of income-tax on the sum of money. The defendant  
claimed that the sum of money was given to the  
plaintiff for the purpose of the plaintiff's business  
and that the defendant was not entitled to a deduction  
of income-tax on the sum of money. The House of  
Lords held that the defendant was entitled to a  
deduction of income-tax on the sum of money.



## WILL.

The residue of an estate was bequeathed "in trust for such charitable institution or institutions or of table or benevolent object or objects as the might in their absolute discretion select." The kin claimed that the words "or benevolent"

—*Bequest to children alive at testator's death and if any child shall die in testator's lifetime leaving child or children living at testator's death—Children of child dead at time of will—Rights.*

The testatrix provided that the residue of the trust moneys was to be held in trust for her children "living at my death . . . provided that if any child of mine . . . shall die . . . before me . . . the residue of the trust moneys shall be divided equally among the children of such child who shall be living at the time of my death."

have taken if such parent had survived me".

*Held*, the children of the will were en  
KENNEDY v. BIRCH  
1940

—*Clause for for*

later dissolved.

*Held*, the question whether or not a person is of the "Jewish faith" is conscience and is one far too uncertain. The condition is (1940) 1 Ch 38

—*Clause of legacies shall be void as offending against perpetuities*

A clause in the will provided as follows:—"If either during my lifetime or after my death my will including any person who this present clause shall be or become or shall marry a Roman Catholic or mix or come under any obligation Roman Catholic any child of such

## WILL.

only have done it within the perpetuity period, then as regards that person the condition is valid. On the facts there was held to be forfeiture. *KE. MORRISON'S WILL TRUSTS*, [1939] 1 Ch 176.

—*Construction—Bequest "of all my horses" to wife—Testator having only horses owned with wife as tenant in common—Extrinsic evidence of the fact—If admissible.*

A bequest was as follows:—"I give to my wife all my horses." The testator and his wife in equal shares three race no other horse or horses, or did not extend to or testator has in common of a horse as co owner. Extrinsic evidence that the

*Gift if can be disclaimed after acts indicating acceptance.*

remainder of my estate I give to A.H. my husband

weekly upon gift.

(1940) 1 Ch 280 = 1940 W.N. 40 = 60 L.L.L. 327 = 162 L.T. 155.

—*Legacies and annuities—A'statement—Rights of annuitants.*

Roman Catholics, it was contended on their behalf that the clause of the will is void because it may operate at a point of time outside the period of time allowed by the rule against perpetuities.

WILL.

Where the estate of the testator is insufficient to pay in full the pecuniary legacies and the annuities which he had bequeathed, the annuities have to be valued and the values treated as legacies and abated proportionately with the pecuniary legacies and the annuitants are entitled to be paid the abated value of the annuities. *Re WILSON* (1940) 4 ALL E R 57 (Ch D).

—Legacy "for benefit of choir"—Construction—General charitable intention—Surplus to be applied cy pres

A legacy and a share of the residue was bequeathed "for the benefit of the choir."

*Held* the gift is an impersonal gift for the advancement and improvement of the musical services of the church by means of a choir. There is a general charitable intention and the surplus funds cy pres. *ROYCE In re TURNER* 1940 W.N 137—56 T.L.R. 540—

—Option to purchase conferred by will—If can be exercised by executors of donee after his death

*Prima facie* an option to purchase given by will to a named person is exercisable by his executors.

—Probate—Will with two codicils—Second codicil disputed—Limited grant as to will and first codicil

—Trust for voluntary associations—Validity

A testator bequeathed his residuary estate to the Bank staff association (a voluntary association) whose object was to give financial assistance to past and present members of the staff or dants. The gift was directed to be held upon the trusts set out in the constitution and rules of the association. It was contended that the gift was not charitable and was a gift to no named persons and the objects of the trust as found in the constitution and rules

capital or the income to any of the purposes therein set

WORKMEN'S COMPENSATION

out or by putting an end to the fund altogether and distributing it among themselves the fact that there may be some difficulty in construing the exact meaning of the rules or the constitution is not a matter which can affect the validity of the gift itself. *TAYLOR, In re MIDLAND BANK EXECUTOR AND TRUSTEE CO. LTD v SMITH* (1940) 1 Ch 481—1940 W.N 151—56 T.L.R. 588

WORKMEN'S COMPENSATION—Accident to workman while boarding a train at a private halt provided by his employer—Accident if out of and in the course of employment—Tests

After finishing his work at the colliery a workman

status as an employee of the colliery. In the press of workmen pushing their way he fell off the platform and his left arm was caught between two railway

—Certification of sickness—Workmen receiving compensation on that day for previous accident—Extent

(1940) 2 ALL E R 201 (U.A.)  
—Injury to engine fireman by airgun aimed at

Injuries. In a claim by the fireman against his employers for compensation

*Held* the workman was required as part of his employment to be on this engine and the casualty arose out of the employment because he was at that place. So he was entitled to compensation. *POWELL v GREAT BRITISH RAILWAYS* 56 T.L.R. 261—137 L.J. 35—32 B.W.O. 293—

applicant for a licence to work on the Coalfield in 1911 and in disobedience to his employer's

## WORKMEN'S COMPENSATION

*Held*, neither the fact that the act is reckless nor the fact that the man knows it to be forbidden is a reason

—*Payment of compensation after notice of accident—How far evidence of accident*

*Slesser, MacKinnon and Goddard L J J (Slesser L J, dissenting)*—In the absence of any evidence from employers the fact of their paying compensation under the Act, is some evidence that they admitted that there was an accident

*Per Slesser L J*—It can amount to no more than an admission that on that date having received notice of accident, the employers paid to the workman a certain sum of moneys possibly equivalent to the sum which he would have been entitled to receive if he had been injured

—*Receipt of compensation by workman—Circumstances precluding common law remedies*

On 8th March, 1938 plaintiff while working on a certain ship to load the vessel was injured by a beam which fell on him. He received half wages during disablement. He did not know his right to damages and right to compensation under the Act.

*Held*, the workman was not receiving the money with knowledge that it was compensation under the Act. He was not precluded from enforcing his common law remedies (1939) 3 All E R 339 reversed *UNSWORTH v ELDEN DEMPSTER LINES* (1940) 1 KB 658 = 56 T L R 319 = 109 L J (K B) 305 = 162 L T 163 = 66 Ll L Rep 1 = (1940) 1 All E R 362 (C A)

—*Sailor dying of yellow fever while working in mosquito infested area—How far accident arising out of employment—Tests*

To hold that an accident (death due to yellow fever while working in mosquito infested area) arose out of the employment a certain degree of casual relation between that accident and the employment must exist. It is impossible exactly to define in positive terms the degree of that casual connection, but certain negative propositions may be laid down, e.g. the fact that the risk is common to all mankind does not prove that the accident does not arise out of the employment. Nor can it be held that death or injury from the forces of nature (e.g. earthquake and lightning) is not merely because the accident is due to the forces of nature an accident arising out of employment. However it has to be shown that the workman was especially exposed by reason of his employment to the incidence of such force (4 B W C C 295), overruled *DOVER NAVIGATION CO v CRAIG* 1940 A C 190 = 1910 W N 4 = 56 T L R 232 = 65 Ll L Rep 181 = 109 L J (K B) 158 = 162 L T 223 = 32 B W C C 300 = (1939) 4 All E R 658 (H L)

## WORKMEN'S COMPENSATION ACT (1925),

S 1—*'Injury by accident'—Mening—Disease before date of incapacity—Effect*

The pressure on the peroneal nerve (caused by the crouching position in which he had to work) during a spell of work brought about the paralysis of the claimant's muscles which is described as dropped foot. In a claim for compensation,

*Held*, the claimant sustained a definite physiological injury in the reasonable performance of his duties and as the result of the work he was engaged in at the time of the injury. The employee is entitled to compensation 'injury' derived

—S 1, (2)—*Death of Railway employee caused while walking along the railway line which was forbidden—Accident if arising out of and in the course of employment*

A fireman was employed or piloting duties. When a driver was not acquainted with the railroad, he had to travel in the engine cab and show it to him. A safe

*Held* reversing the decision of the Court of Appeal in (1939) 2 All E R 817 that though the accident did not arise out of the employment and occurred while the deceased was contravening the regulations as to his proper route from the engine house to the station, the workman was walking along the line for the purpose of and in connection with his employers trade or business. The accident must therefore be deemed to arise out of and in the course of the employment and the widow is entitled to compensation. *Clarke v Southern Railway Co* 96 L J K B 572 Overruled *NOBLE v SOUTHERN RAILWAY CO* (1940) A C 585 =

1940 W N 159 = 56 T L R 615 = (1940) 2 All E R 383 (H L).

—(1929) S 6—*Claim for indemnity against sub contractors by the contractors who had paid compensation to sub contractor's servant who was injured—If could be defeated by showing negligence or breach of statutory duty by the principal contractor which caused the accident*

The Workmen's Compensation Act, S 6, contained no limitation of the right of the principal to indemnify against his sub contractor in respect of compensation paid to an injured servant of the sub contractor. The

